ASSEMBLÉE NATIONALE

DRAFT REPORT

COMMITTEE TO EXAMINE MATTERS RELATING TO THE ACCESSION OF QUÉBEC TO SOVEREIGNTY

COMMITTEE TO EXAMINE MATTERS RELATING TO THE ACCESSION OF QUÉBEC TO SOVEREIGNTY

DRAFT REPORT

WORKING PAPER

93-00659/

Legal deposit - 3rd quarter 1992
Bibliothèque nationale du Québec

ISBN 2-550-26528-9

In this publication, the masculine form is used without discrimination and solely for the purpose of lightening the text.

NOTE TO THE READER

This publication was produced by the Secretariat of the Committee to Examine Matters Relating to the Accession of Québec to Sovereignty. This Committee was established in June 1991, pursuant to the *Act respecting the process for determining the political and constitutional future of Québec*.

This document is the English translation of the draft report prepared for the members of the Committee. Its content has not been approved by them nor by the National Assembly. It addresses the main questions studied by the Committee.

Québec, September 16, 1992.

TABLE OF CONTENTS

1 Membership of the Committee 1

2 Mandate 3

3 Introduction 7

4 Attributes of a Sovereign Québec 9

4.1 A distinct national collectivity 9

4.1.1 The Québec people 9
4.1.2 Nationality 10
4.1.3 Immigrants and refugees 13

4.2 Human rights and minority rights 16

4.2.1 Protection of human rights 17
4.2.2 Protection of minority rights 19

4.3 The aboriginal nations 25

4.3.1 The Canadian constitutional framework and aboriginal rights 26
4.3.2 Aboriginal peoples in Québec and other provinces 27
4.3.3 Concerns and positions of the aboriginal peoples 28
4.3.4 Options 32

4.4 Territory *34*

4.4.1 Territorial land *34*
4.4.2 Territorial waters *41*
4.4.3 Arbitration of border disputes *45*

4.5 Institutions *46*

4.5.1 The new constitutional order *47*
4.5.2 Institutional continuity *49*

4.6 International personality *53*

4.6.1 International recognition *53*
4.6.2 Participation in the international community *55*

5 Implications of the Implementation of Sovereignty **61**

5.1 Legal questions *61*

5.1.1 Procedures governing secession *62*
5.1.2 Legal continuity *66*

5.2 Government services *73*

5.2.1 The current state of federal services *73*
5.2.2 The transfer of responsibility for federal services *75*
5.2.3 The transfer of federal public servants *77*
5.2.4 Defence *80*

5.3 Economic questions *84*

5.3.1 The Québec economy and the international context *84*
5.3.2 Economic and commercial relations *93*
5.3.3 Border regions and the Outaouais region *118*
5.3.4 The currency of a sovereign Québec *125*
5.3.5 The financial sector *130*
5.3.6 Economic implications *136*

5.4 Public finances *150*

5.4.1 Public finances in Québec and Canada *150*
5.4.2 Dividing the federal government's assets and debt *151*
5.4.3 The budget *164*

1

Membership of the Committee

Chairman

Guy Bélanger, MNA for Laval-des-Rapides

For the Government party

Robert Bourassa, Prime Minister of Québec, MNA for Saint-Laurent

Louise Bégin, MNA for Bellechasse
Robert Benoît, MNA for Orford*
Jacques Chagnon, MNA for Saint-Louis
Michel Després, MNA for Limoilou
Henri-François Gautrin, MNA for Verdun
Robert LeSage, MNA for Hull
Cosmo Maciocia, MNA for Viger
Gil Rémillard, MNA for Jean-Talon
Maurice Richard, MNA for Nicolet-Yamaska
Michel Tremblay, MNA for Rimouski

* Substitute for the Prime Minister

For the Official Opposition party

Jacques Parizeau, Leader of the Official Opposition, MNA for L'Assomption

André Boulerice, MNA for Sainte-Marie—Saint-Jacques*
Jacques Brassard, MNA for Lac-Saint-Jean
Jocelyne Caron, MNA for Terrebonne**
François Grendron, MNA for Abitibi-Ouest**
Jacques Léonard, MNA for Labelle
Pauline Marois, MNA for Taillon

* Substitute for the Leader of the Official Opposition
** Non-voting member

Independent MNA

Neil Cameron, MNA for Jacques-Cartier

2

Mandate

On June 20, 1991, the National Assembly of Québec passed the *Act respecting the process for determining the political and constitutional future of Québec*. The Act instituted two parliamentary committees: the Committee to Examine Matters Relating to the Accession of Québec to Sovereignty and the Committee to Examine any Offer of a New Constitutional Partnership.

The preamble of the Act lays out the grounds which prompted the National Assembly to form the committees, and explains the environment in which they received their orders of reference:

WHEREAS the Commission on the Political and Constitutional Future of Québec has submitted its report, together with its conclusions and recommendations;

Whereas Quebecers are free to assume their own destiny, to determine their political status and to assure their economic, social and cultural development;

Whereas Quebecers wish to play an active part in defining the political and constitutional future of Québec;

Whereas the Constitution Act, 1982, *was proclaimed despite the opposition of the National Assembly;*

Whereas the 1987 Constitutional Accord, *the aim of which was to allow Québec to become a party to the* Constitution Act, 1982, *has failed;*

Whereas it is necessary to redefine the political and constitutional status of Québec;

Whereas Québec has already demonstrated its respect for democratic values and individual rights and freedoms;

Whereas Québec has recognized that Quebecers wish to see the quality and influnece of the French language assured and to make it the language of Government and the Law, as well as the normal and everyday language of work, instruction, communication, commerce and business;

Whereas Québec intends to pursue this objective in a spirit of fairness and open-mindedness, respectful of the rights and institutions of the English-speaking community of Québec;

Whereas Québec recognizes the right of the Amerinds and Inuit of Québec to preserve and develop their specific identity and culture and to assure the progress of their communities;

Whereas Québec considers the contribution of the cultural communities to be of prime importance for the development of Québec;

Whereas Québec supports French-speaking communities outside Québec and contributes to the international French-speaking world;

Whereas the Commission on the Political and Constitutional Future of Québec recognizes that a valid solution, other than the political sovereignty of Québec, would be a fundamental renewal of federalism through the establishment of a new constitutional partnership;

Whereas Québec wishes to ensure that everyone should have a fair understanding of the changes that are necessary to make the Canadian federal system acceptable to Québec and of the true definition of sovereignty and of its political, economic, social and cultural implications;

Whereas the Gouvernement du Québec retains at all times its full prerogative to initiate and assess measures to promote the best interests of Québec;

Whereas the National Assembly continues to hold the sovereign power to decide on any referendum question and to pass appropriate legislation where necessary;

Whereas in consequence it is expedient to provide for the holding of a referendum on the sovereignty of Québec, to create a special parliamentary committee to examine and analyse matters relating to the accession of Québec to full sovereignty, and to create a special parliamentary committee to assess any offer of a new constitutional partnership from the Government of Canada.*

The report of the Committee to Examine Matters Relating to the Accession of Québec to Sovereignty is the result of the completion of the first part of the Committee's order of reference, as described in section 3 of the Act:

The order of reference of the committee is to examine and analyse matters relating to the accession of Québec to full sovereignty, that is, to a position of exclusive jurisdiction, through its democratic institutions, to make laws and levy taxes in its territory and to act on the international scene for the making of agreements and treaties of any kind with other independent States and participating in various international organizations, and to make recommendations to the National Assembly in that regard.

A further order of reference of the Committee is to examine and analyse any formal offer of economic partnership that may be made by the Government of Canada, and to make recommendations to the National Assembly with regard to the offer.

To accomplish its task, the Committee heard testimony from 53 experts. In addition, it drew on research carried out by specialists and on the work of its secretariat. Finally, to gain a better understanding of the concerns of the aboriginal nations, it heard the testimony of some of their representatives.

*As amended by *An Act to amend the Act respecting the process for determining the political and constitutional future of Québec* passed in the National Assembly on September 8, 1992.

3

Introduction

The preamble of the *Act respecting the process for determining the political and constitutional future of Québec* states that Québec wishes that everyone should have a fair understanding of the changes that are necessary to make the Canadian federal system acceptable to Québec and of the true definition of sovereignty and of its political, economic, social and cultural implications.

In its report, the Committee to Examine Matters Relating to the Accession of Québec to Sovereignty attempts to give an account of all the issues it has studied, to provide Quebecers with a fair definition of sovereignty and advise them of its implications.

In this regard, the members of the Committee subscribe to the view that a clear democratic expression of the will of the people of Québec would provide a legitimate foundation for an eminently political act, such as accession to sovereignty. The members noted that the National Assembly has affirmed this legitimacy on many occasions, specifically the 1980 referendum, the 1990 *Act to establish the Commission on the Political and Constitutional Future of Québec* and the 1991 *Act respecting the process for determining the political and constitutional future of Québec*. Finally, it is worth noting that the highest federal authorities have, at various times, recognized the legitimacy of this option.

The members of the Committee are also convinced that it is in the interests of Québec and Canada to maintain the benefits engendered by the current integration of the Canadian economic space. For this reason, they

attach a great deal of importance to the process by which Québec might attain sovereignty while maintaining the best possible relations with Canada. However, Committee members are highly divided as to their assessment of the risk of an acrimonious climate prevailing should Québec attain sovereignty.

Despite this significant divergence of opinion, the Committee has studied various questions with regard to which it would be necessary or desirable for Québec to reach agreement with Canada were the former to achieve the status of a sovereign State.

In many instances, the Committee was unable to draw conclusions about the likelihood of such agreements being reached and leave it up to Quebecers to ultimately weigh the arguments presented to them and judge the risks, advantages or disadvantages inherent in the options pertaining to their political and constitutional future.

Were it to achieve sovereignty, Québec would have to adopt its own constitutional and legal order.

Québec would have many options to choose from for the definition and implementation of its new constitutional order. This is discussed in section 4 of this report, dealing with the attributes of a sovereign Québec in terms of its population, human and minority rights, aboriginal nations, territory, institutions and international personality.

Replacing the Canadian legal and constitutional order would also have consequences on the social and economic life of Quebecers. These are dealt with in section 5 of the report in terms of their legal and economic aspects, as well from the standpoint of government services and public finances.

4

Attributes of a Sovereign Québec

4.1 A distinct national collectivity

Quebecers are free to assume their own destiny, to determine their political status and to assure their economic, social and cultural development.

> From the *Act respecting the process for determining the political and constitutional future of Québec*, passed by the National Assembly on June 20, 1991.

The people are the main constituent of the State, which exists only for the people. It is important to define who constitute the people of Québec, who would be citizens of Québec following sovereignty, and what would be the situation of immigrants and refugees.

4.1.1 The Québec people

Sovereignty is ultimately held by the people. It is up to the people to choose agents to exercise this sovereignty, and to determine the political framework in which it is exercised. It is therefore important to define which persons make up the people, and what values unite them. In considering this issue, members drew on the testimony of Professors Simon Langlois, Danielle Juteau, Marie McAndrew and Fernand Dumont.

Over the years, Quebecers have become aware that they form a people, a distinct national collectivity. There is a broad consensus on the composition of the Québec people: a Quebecer is anyone who is domiciled in Québec. In fact, when Quebecers have to decide on their political and constitutional future, each person makes his choice regardless of language or place of birth. Quebecers form a modern, multi-ethnic community, based on acceptance of shared values, a common language of communication and participation in the life of the community.

In Québec, the use of the French language encourages involvement in the life of the community. The language laws are designed, among other things, to make such involvement easier for new arrivals. As a result, such legislation has contributed to the transformation and enrichment of society as a whole. In addition, the consolidation of the status of French has had a reassuring effect on Quebecers of French ancestry, thus helping to foster an open, welcoming attitude to immigrants from a wide variety of backgrounds.

Beyond these linguistic considerations, it is fundamentally important to nourish democratic values and improve the balance between individual and collective rights to foster a growing willingness among Quebecers to live together. Where a group becomes part of a society's community life and adheres to its shared values, it is normal that it should wish and be able to protect its own heritage, which enriches the entire society. Finally, this willingness to live together must be reflected in social and political institutions whose legitimacy is acknowledged by all citizens.

4.1.2 Nationality

It is important to ascertain the implications on nationality of Québec's becoming sovereign. The Committee asked Professor Claude C. Emmanuelli to carry out a study on the matter, entitled *L'accession du Québec à la souveraineté et la nationalité*. The study, its presentation before the Committee, and the work of the Committee's secretariat provided useful input for the Committee's research work.

Under existing international law, each State decides who its nationals are. It would therefore be the responsibility of a sovereign Québec to establish such rules as it considered appropriate in this regard.

Were it to follow the practice of States in the matter, Québec should confer its nationality on all Canadian citizens established in Québec on the day of independence. A decision would be required as to whether such

action would depend on the individual's intention to remain in Québec, or simply on the fact that he normally resides in Québec. In addition, there is the question of whether extending Québec nationality to persons originally from Québec but actually living outside its territory would be appropriate.

Assuming Canada follows the usual practice of States in such matters, it would withdraw its nationality from persons established in Québec. Canadian citizens established in Québec would therefore lose their status unless they left Québec within a reasonable time and settled in Canada. Canada could obviously continue to recognize such persons as its nationals, even if they decided to remain in Québec. The expert who appeared before the Committee felt that this hypothesis was unlikely.[1]

The study concludes that the consequences of the succession of States on nationality depend essentially on the political choices of the successor and predecessor States. The author of the study writes that an agreement between Québec and Canada to settle nationality questions would be desirable.

A right of option could be considered to avoid imposing a nationality on some people who do not want it, or depriving others of a nationality they wish to retain. International law does not impose the recognition of such a right of option but, according to a fairly common practice, persons wishing to officially refuse Québec nationality could do so within a period of time to be decided.

The expert the Committee consulted recommends that individuals whose nationality would be affected by Québec's accession to sovereignty be granted a right of option. He adds that persons refusing Québec citizenship would become aliens in Québec. The new State would obviously regulate the right of aliens to establish themselves in Québec. Normally, aliens do not enjoy all the rights granted to nationals, such as the right to vote, and their legal status is generally more precarious than that of nationals.

---

1. Claude C. EMANUELLI, *Journal des débats*, January 21, 1992, Committee to Examine Matters Relating to the Accession of Québec to Sovereignty (CEAS-504).

According to another expert,[2] the right of option should be limited to certain categories of citizens. In his view, it would be neither in Québec's nor Canada's interests to grant a right of option to all citizens of Québec, since this would entail the existence of a large Canadian population within another sovereign State. He suggests that the right of option should be restricted to Canadian citizens living in Québec but not born in Québec, and to Canadian citizens born in Québec but not domiciled or residing there when Québec becomes sovereign. The right of option could be exercised within a period of two years.

This expert also believes that though it is highly unlikely that most Québecers would retain Canadian citizenship after sovereignty, Québec's interests would not be served by preventing its citizens from retaining the citizenship of other States that grant them that right. However, he recommends that Québec reach an agreement with Canada to limit cases of dual or multi-citizenship. As for the possibility of maintaining both Canadian and Québec citizenship, it must be borne in mind that Canada would retain sole control of matters relating to Canadian citizenship.

Nevertheless, it seems to be in the interests both of Québec and Canada to avoid a situation in which all residents of a sovereign Québec would continue to retain Canadian nationality, in addition or instead of Québec nationality. Such a situation would be at odds with sovereign statehood, both in theory and in practice. Persons holding dual nationality could not invoke the diplomatic protection of Québec against Canada and vice versa. Canada might have to provide services to unusual numbers of its citizens living outside its borders, which would give rise to serious logistical problems. Each State would also have to decide to what extent such persons would enjoy the civil rights normally inherent in the status of citizen, particularly the right to vote. The granting of a right of option could be done in such a way as to reserve it for certain categories of persons. Like the *Code de la nationalité française* (section 12), exceptions to naturalization could be granted only for persons domiciled outside Québec whose actions give tangible evidence that they do not want to be part of Québec society.

The creation of European citizenship, in the Maastricht draft treaty, to be superimposed on the various nationalities of member States, may offer another approach. In Europe, common citizenship includes the right to travel and sojourn on the territory of member States, as well as eligibility

---

2. Daniel TURP, *La citoyenneté et l'État-Nation : Leçons à tirer de l'expérience de la CEE*, text presented as part of a symposium on citizenship, January 20, 1992, Ottawa, 11 pp.

to stand for and the right to vote in municipal elections. It may be useful, in the Québec context, to separate the concepts of nationality and citizenship. The European example could provide a pattern for a future economic agreement between Canada and a sovereign Québec, involving a reciprocal guarantee of freedom of movement and establishment of persons and businesses of both States.

It should be noted that under the *United Nations Convention on the Reduction of Statelessness*, Canada is required, assuming it reached an agreement with Québec, to ensure that the transfer of sovereignty over the territory of Québec does not lead to cases of statelessness. A sovereign Québec that adhered to the Convention should confer its nationality on individuals who would otherwise become stateless as a result of the succession.

Finally, Québec should pass legislation stipulating the rules under which Québec nationality is attributed to newborn babies. The new State could make birth on Québec soil the main criterion of nationality. On the other hand, it could, like other western countries, give precedence to blood ties, and restrict Québec nationality to children born of a Québec mother or father. The first approach, by allowing children born of immigrant parents to acquire Québec citizenship, would strengthen the elective and multi-ethnic nature of the Québec national collectivity.

4.1.3 Immigrants and refugees

Under section 95 of the *Constitution Act, 1867*, immigration is an area of shared legislative jurisdiction and preponderance is given to federal legislation in the event of incompatibility. Seven provinces have concluded agreements with the federal government to manage this shared jurisdiction. However, Québec is the only province directly involved in selecting immigrants abroad. It provides reception services, with federal financial support, under a five-year Canada-Québec agreement which will expire in 1995. There are currently about 150 000 immigrants and refugees in Québec.

A sovereign Québec would assume the full range of powers pertaining to immigration. Its jurisdiction would no longer be subject to the predominant power of the federal Parliament. In addition to the questions covered by the existing agreement, matters such as the status of refugees and security, now within the purview of Ottawa, would be transferred to Québec.

The Committee asked an expert to study the international obligations of a sovereign Québec pertaining to immigration.[3] The Committee found this study very enlightening.

The most significant multilateral treaties in this area are unquestionably the 1951 *Convention on the Status of Refugees* and its protocol, and the 1966 *International Covenant on Civil and Political Rights* and its protocol. Canada is a party to these treaties. A sovereign Québec would simply have to communicate its adherence to these treaties to the competent authorities to confirm that the guarantees they provide will be maintained. The same would apply to the other multilateral conventions of a humanitarian nature affecting immigration and refugees. By becoming a member of the International Labour Organization, Québec would inherit that organization's conventions, many of which prohibit discrimination against foreign workers.

Refugee claimants who, depending on the year, account for over one quarter of total immigration to Québec, are subject to a special regime under international law. The *Convention on the Status of Refugees* defines the term *refugee*, for instance, in a way that limits a State's discretion in this regard. Should a sovereign Québec adhere to this treaty, it would have to develop a policy on refugees that complies with its international obligations. Mainly, it would have to ensure that its immigration policy does not impede the implementation of this treaty. With that in mind, it has been suggested that the ministère de la Justice or the ministère des Affaires internationales be given responsibility for the process of recognizing refugees, as is the case in Switzerland and France, rather than the department responsible for immigration.

Subject to the foregoing, international law leaves States free to admit whom they see fit to their territory and to decide on the selection process and criteria.

Concerning Canada's bilateral treaties governing entry mechanisms and length of stay of aliens - tourists, students, diplomats, immigrants of various kinds - as well as an alien's social status, Québec should decide whether or not to negotiate similar agreements with the States involved on a case by case basis.

The expert consulted by the Committee identified a large number of bilateral agreements to which Canada is currently a party. To date,

---

3. François CRÉPEAU, *Les obligations internationales d'un Québec souverain en matière d'immigration*, December 1991, 74 pp.

Canada has concluded visa exemption agreements with 25 countries; agreements on the employment of seasonal farm labourers with eight countries; agreements on social security with 22 countries; taxation agreements to avoid double taxation of personal income with 50 countries; and agreements on extradition or legal cooperation in criminal matters with 48 countries.

By virtue of Québec's becoming sovereign, immigrants and refugees in the process of obtaining Canadian nationality in Québec would transfer to the process of obtaining Québec citizenship. Except in the unlikely event that Canada objects, these immigrants and refugees would obviously be free to leave Québec and continue their efforts to obtain Canadian citizenship in Canada. In addition, any who decide to remain in Québec should enjoy their acquired rights, i.e. obtain Québec citizenship under the conditions of the Canadian system, though international law places no obligations on Québec in this regard.

4.2 Human rights and minority rights

There is considerable variation in the experience of States pertaining to the protection of human rights and minority rights. The differences are concentrated on two points: first, the scope of the guarantees and second, the priority of these guarantees in the State's legal order. Québec's accession to sovereignty would raise the question: which combination of these two factors would best suit Québec society?

Jurists Jules Deschênes and José Woehrling dealt with the protection of human rights in their testimony to the Committee. Professors Jacques-Yvan Morin and Nicole Duplé also discussed this issue. Finally, Professor Woehrling produced a study[4] for the Committee which, along with the testimony it heard, helped further the Committee's analysis.

Basic rights are, by and large, traditional individual rights such as the presumption of innocence or freedom of expression. Each individual may exercise such rights regardless of his origins or affiliations. Minority rights are part of collective rights: an individual may only take advantage of such rights as a member of a group or social category. Among the most frequently cited minority rights, mention should be made in particular of language and cultural rights.

The situation in the United States with respect to the priority of human rights is frequently contrasted with that in the United Kingdom. In the United States, the classic human rights are enshrined in the Constitution. It is therefore impossible for legislative assemblies at the state level or even the Congress to amend or abolish them. To do so, a very exacting constitutional amendment procedure must be followed. In addition, any law that is incompatible with human rights can be invalidated by the courts.

In contrast, in the United Kingdom, human rights are not enshrined in a constitution at the top of the legal hierarchy. In fact, the U.K. does not have that kind of constitution. No legal standards rank higher than the statutes enacted by the Parliament of Westminster. The courts therefore do not have the responsibility of monitoring the constitutionality of these statutes. In spite of this, human rights are respected in the United Kingdom because the actions of the state are controlled primarily through the political system. However, in recent years, the implementation of the

---

4. José WOEHRLING, *Les droits des minorités linguistiques et culturelles dans un Québec souverain*, December 1991, 57 pp.

European Convention on Human Rights has raised questions about the British model.

Many options fall between these two models. However, in almost all western democracies, a broad consensus supports the constitutionalization of human rights. Moreover, the range of rights a State recognizes can vary significantly, subject to its international obligations in this regard.

4.2.1 Protection of human rights

The human rights Quebecers currently enjoy are protected at three levels: first, Canada and Québec subscribe to the *International Covenant on Civil and Political Rights*, as well as other treaties concerning human rights. Second, in the Canadian constitutional order, the *Charter of Rights and Freedoms* has, since 1982, protected these rights against legislative and administrative measures. Third, the Québec *Charter of human rights and freedoms* while providing similar protection, adds guarantees regarding relations between individuals.

Québec declared itself bound by the International Covenant in 1976. A sovereign Québec would need only advise the relevant authorities of its adherence to this treaty to confirm that the guarantees the treaty provides would be maintained. Obviously, the Canadian Charter would no longer apply in a sovereign Québec. The Québec Charter would continue to have force of law, as would all other Québec laws.

The Québec Charter codifies fundamental values and the courts have agreed that it should prevail over incompatible statutes. The Québec Charter protects a wide range of rights and freedoms - wider, in fact, than the Canadian Charter - going as far as a statement of economic and social rights, including the rights of ethnic minorities to develop their culture. In addition, the Québec Charter's influence extends beyond areas in which the State intervenes to relations between individuals. However, it does not have the status of constitutional law in the formal sense of the term, and can be amended by a simple majority vote of the National Assembly.

To strengthen the legal status of rights and freedoms in a sovereign Québec, the Québec Charter would have to be constitutionalized, i.e. transformed into a text at the peak of the legal hierarchy, by requiring that any amendment undergo a particularly exacting procedure.

Quebecers have been living for some time under a system in which legal control of the validity of laws pertaining to human rights coexists with the

possibility of Parliament's having the last word when, in its view, the issues at stake go beyond the framework of a legal debate on human rights. In Canada, this compromise is reflected in the presence of the notwithstanding clause (section 33) in the Canadian Charter. The federal Parliament and the provincial legislatures may adopt measures that depart from provisions in the Charter except those pertaining to democratic rights, provided that the derogation is explicit. Such a derogation is valide for five years and may be reactivated at the end of each five-year period. The same compromise is present at the provincial level. The National Assembly can waive the guarantees of the Québec Charter by an explicit statement to that effect (section 52). The derogation remains in force as long as it has not been eliminated; it does not have to be reactivated every five years. Obviously, the Québec Charter may be amended by ordinary legislation. This type of derogation with respect to a constitutionalized charter could be maintained should Québec become sovereign.

Assuming the Québec Charter is constitutionalized, its content would have to be revised beforehand. Not all existing Charter guarantees are necessarily of the type that generally deserve constitutional permanence. For instance, the entrenchment of the provisions pertaining solely to relations between individuals should be examined. There is unanimous agreement that human rights and freedoms belong quite naturally in a modern constitutional charter. Some suggest adding economic, cultural and social rights to these constitutional guarantees, such as those currently included in the Québec Charter. Finally, the scope and nature of protection of the rights of the aboriginal peoples and other minorities should be examined.

The constitutionalization of human rights raises the question of the effects of a constitutional Charter on the delicate balance between the individualistic thrust of a legal declaration of rights and freedoms and the community concerns underlying, for instance, Québec's language legislation. This balance is constantly changing. One way of dealing with the issue in a constitutional Charter would be to provide the French language with protection similar to that granted to freedom of expression, for example, without establishing a priority. This would leave the courts with the task of resolving conflicts between language rights and traditional human rights, without a higher status being attached to the latter. Another way to decide the issue would be to retain a notwithstanding clause in the constitutional Charter.[5] From the same standpoint, but more generally,

---

5. José WOEHRLING, December 16, 1991 (CEAS-424).

the concerns raised in some quarters to the effect that a constitutional Charter could cause a neo-liberal political philosophy to prevail at the expense of certain community values would have to be taken into account. One way to deal with this might be through provisions stating the recognized rights of certain groups.

4.2.2 Protection of minority rights

A) The English-speaking community

The English-speaking community has been established in Québec for more than 200 years and its contribution to Québec society is apparent in every sector. While its vitality has played a signal role in Québec's economic expansion, its cultural contribution has also marked the intellectual and social life of Québec.

Under the Canadian Constitution, the rights of Québec's English-speaking community are currently protected by the *Constitution Act, 1867*, and by the *Canadian Charter of Rights and Freedoms*. They are also protected by the Québec *Charter of human rights and freedoms* and certain provisions contained, for instance, in the *Charter of the French Language* and the *Act respecting health services and social services*.

Under section 133 of the *Constitution Act, 1867*, Québec's laws are passed in French and English, and both versions have official status. The same section also authorizes the use of English in parliamentary debates, and in any plea or procedural document submitted to or produced by the Québec courts .

The Canadian Constitution, including section 133, would cease to apply in Québec should the latter become sovereign. Québec could either reinstate it of its own volition, or reinstate sections 8 to 13 of the *Charter of the French Language*, relating to the language of legislation and justice in Québec and rendered inoperative by a decision of the Supreme Court. Sections 8 to 10 of the Charter state that the laws of Québec are to be passed in French only, and then translated into English for purposes of publication. According to section 11, companies can plead in English only if all the parties to the proceedings give their consent. Section 12 states that procedural documents can be written in English only if the addressee consents. Finally, section 13 states that decisions rendered in English must be accompanied by a certified translation, which is the only official version.

In education, the *Canadian Charter of Rights and Freedoms* gives Canadian citizens who received their elementary education in English or French and reside in a province where such language of instruction is the language of the province's linguistic minority the right to have their children educated in that language. However, this right, stipulated in section 23, also known as the "Canada clause", can be exercised only in areas of a province where publicly-funded instruction in the language of the minority is warranted by the number of children.

The Canadian Charter, without Québec's consent, broadened the conditions of admission to English schools in Québec. The "Canada clause" took precedence over section 73 of the *Charter of the French Language*, the "Québec clause", which restricted access to elementary and secondary English schools in Québec to children one of whose parents received most of his or her elementary schooling in English in Québec.

To encourage mobility of persons between Québec and Canada, a sovereign Québec could continue to provide access to English schools in Québec to children of parents who were educated in English elsewhere in Canada. Or, while maintaining the acquired rights of those who have already benefited in Québec from the application of the "Canada clause", it could simply apply section 86.1 of the *Charter of the French Language* and make English schools accessible only to children whose parents were educated mostly in English in a province where "services of instruction in French offered to French-speaking persons are comparable to those offered in English to English-speaking persons in Québec". In 1983, Québec decided that New Brunswick satisfied this criterion.

Finally, it should be pointed out that in terms of English education funding, Québec goes far beyond the requirements of section 23 of the Canadian Charter. Members of Québec's English-speaking community already have a complete network of English schools fully financed by Québec public funds, and independently managed by English-speakers. In addition, any eligible student can attend these schools, regardless of where he lives. In and of itself, Québec's accession to sovereignty would not change this situation.

In accordance with section 93 of the *Constitution Act, 1867*, Québec has gradually established two complete denominational school board networks: a Catholic network and a Protestant network. While, strictly speaking, section 93 does not afford language protection to anglophones, Québec's English-speaking community has been able to use denominational protection to extend its network of school boards. The fact is that a

majority of Catholic school boards are francophone, while a majority of Protestant school boards are anglophone.

If Québec were to become sovereign, section 93 would cease to apply. Under the *Education Act*, which the Gouvernement du Québec passed in 1988 but decided not to put into effect until its constitutionality with regard to the *Constitution Act, 1867* had been tested in the Supreme Court, confessional networks would be replaced with linguistic networks.

The confessional school boards of Montréal and Québec City would be maintained by virtue of the *Education Act*. However, they would have jurisdiction solely over their co-religionists, i.e., to take a concrete example, the Protestant School Board of Greater Montréal would lose non-Protestant students, English or French-speaking, to the linguistic school boards. Consequently, the size of the school network currently administered in Montréal by anglophones would likely decline. It should be noted, however, that a similar situation would obtain if, in the Canadian context, the Supreme Court were to decide that the *Education Act* is compatible with section 93.

The *Canadian Charter of Rights and Freedoms* protects members of the English-speaking community against discrimination since subsection (1) of section 15 stipulates that all are equal before the law and that every individual has the right to equal protection and equal benefit of the law, "without discrimination [...]." Moreover, subsection (2) of section 15 allows for the implementation of affirmative action programs.

In a sovereign Québec, anglophones would enjoy equivalent protection. Section 10 of the Québec *Charter of human rights and freedoms* notably prohibits discrimination on the basis of language. Sections 86 to 92 of the Québec Charter go further than subsection (2) of section 15 of the Canadian Charter, since they provide for the implementation of affirmative action programs and also the possibility of resorting to the courts to impose their implementation.

As far as the language of administration is concerned, the Constitution of Canada does not give members of Québec's English-speaking minority the right to address Gouvernement du Québec institutions in English, nor does it force these institutions to provide services in English.

The *Charter of the French Language* authorizes municipal and school bodies, health services and social services providing services for a population a majority of which speak a language other than French to offer services in that language. The new *Act respecting health services*

and social services, in effect since 1986, goes further and stipulates that English-speakers have the right to receive these services in English in establishments recognized as offering services to an English-speaking majority.

Finally, the protection English enjoys in the business and commercial sectors arises, according to jurisprudence, from the right to freedom of expression guaranteed by the Québec Charter and the Canadian Charter. Under both charters, the sections of the *Charter of the French Language* requiring the exclusive use of French on commercial signs and in business names were declared unconstitutional by the Québec Court of Appeal and the Supreme Court of Canada. These same sections, slightly modified by the *Act to amend the Charter of the French Language* (Bill 178, S.Q., 1988, c. 54), are currently being contested before the United Nations Human Rights Committee, which must decide whether they violate the provisions of the *International Covenant on Civil and Political Rights* to which Canada and Québec subscribe.

Should Québec become sovereign and continue to override the sections of the Québec Charter that guarantee freedom of expression, the provisions of the *Charter of the French Language* pertaining to signs would continue to apply. However, they could still be contested under the International Covenant to which the new State would surely want to adhere.

It can therefore be concluded that, were Québec to attain sovereignty, and assuming that current Québec legislation is maintained, most of the rights the English-speaking community now enjoys would remain intact. However, protection provided pursuant to section 133 of the Canadian Constitution would cease. Unless Québec legislation was amended, members of that community could use English in parliamentary debates and before the courts; their schools would continue to be funded under conditions currently in effect; the Québec Charter would still protect them from discrimination; government services in English would still be available in accordance with the *Charter of the French Language* and the *Act respecting health services and social services*. The situation with respect to signs would remain unchanged provided the new State maintained its current exceptions.

On the other hand, in a sovereign Québec where the Canadian Charter no longer applied and the complete *Charter of the French Language* was once again adopted, the English versions of texts of statutes and court decisions would lose their official value; companies would have to address the courts in French and obtain the authorization of all parties to a case to plead in English before the courts, procedural documents could be written

in English only with the consent of the addressee and the English version of court decisions would no longer be official. Finally, only Canadians from the province of New Brunswick could still benefit from the "Canada clause"; in other cases, admission to English schools would be governed by the terms of the "Québec clause".

B) Cultural communities

The Québec people also includes a large number of persons of ancestry other than French, British or aboriginal. They unquestionably have enriched Québec. Not only do they promote the demographic upswing that is needed to maintain Quebecers' standard of living and the influence of their common language and culture, but they also help broaden Québec's openness to the world.

Many Quebecers from the cultural communities are perfectly integrated into the host society which they have helped to transform through their cultural and economic contribution. Others, often more recent arrivals, are still seeking to balance their ties to their community of origin and their participation in the national collectivity.

Québec has taken steps to do away with the discrimination that sometimes prevents Quebecers from the cultural communities from participating fully in these activities. Section 10 of the Québec *Charter of human rights and freedoms* states that: "Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour [...], religion [...], language, ethnic or national origin [...]." Sections 86 to 92 of the Québec Charter even provide, as mentioned earlier, for the implementation of affirmative action programs and use of the courts to enforce them.

Sections 10 and 86 to 92 of the Québec Charter provide members of Québec's cultural communities with protection comparable to that available under section 15 of the *Canadian Charter of Rights and Freedoms*. This section stipulates that "[e]very individual [...] has the right to the equal protection and equal benefit of the law without discrimination [...]" and allows for the implementation of affirmative action programs. Should Québec become sovereign and, consequently, the Canadian Charter no longer apply, the Québec Charter would continue to protect Quebecers from cultural the communities against discrimination.

Moreover, in the event of sovereignty, section 43 of the Québec Charter would continue to give effect to Québec's commitment to diversity. This section reads as follows: "Persons belonging to ethnic minorities have a right to maintain and develop their own cultural interests with other members of their group."

The *Canadian Charter of Rights and Freedoms* does not contain a similar provision. However, section 27 of the Charter states that: "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."

Québec has also made a commitment to the international community to respect the rights of Quebecers of cultural communities by adhering, as a province, to the *International Covenant on Civil and Political Rights*. Section 27 of the Covenant stipulates that persons belonging to minorities are entitled "in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." Should Québec become sovereign, it would certainly wish to formally adhere to the Covenant.

In its 1990 *Policy Statement on Immigration and Integration*, the Gouvernement du Québec indicated that Québec's policy on integration reflected a determination to make Québec a society in which French is the common language of public life, a democratic society where each person's participation and contribution is welcomed and promoted, a pluralist society open to contributions from all sides, within the limits imposed by fundamental democratic values and the necessity of inter-community exchange. These objectives would not be jeopardized by Québec's accession to sovereignty.

4.3 The aboriginal nations

Since the arrival of the Europeans, and especially after the British conquest, the aboriginal nations have lived under a fiduciary relationship with the Crown. The Crown is responsible for ensuring that the interests of the aboriginal peoples are protected. Since 1867, the federal Parliament has had legislative jurisdiction over the aboriginal peoples. As such, they enjoy relative immunity in regard to provincial legislation and local regulations. Until quite recently, the aboriginal nations had little to do with society in general and hardly took part in debating major issues.

There are some 62 000 aboriginal people in Québec, 55 000 Indians and 7 000 Inuit, accounting for 0.8% of the population. Compared to Québec society as a whole, they are disadvantaged in terms of life expectancy, schooling, employment, average income and crime. Their traditional hunting, fishing and trapping activities are declining in importance. However, the social and economic reality is somewhat different in northern Québec where, under the James Bay and Northern Québec Agreement and the Northeastern Québec Agreement, the Crees, Naskapis and Inuit enjoy a higher average income, compensation for the gradual decline in their traditional activities, and greater authority over local and regional administration and education.

The Committee heard a great deal of testimony during its study of relations between Québec and the aboriginal nations. It received aboriginal delegations headed by the following persons: Jean-Maurice Matchewan, Grand Chief of the Algonquin Nation; Max "Oné-Onti" Gros-Louis, Grand Chief of the Huron-Wendat Nation; Ovide Mercredi, National Chief of the Assembly of First Nations; and Matthew Coon Come, Grand Chief of the Grand Council of the Crees of Québec. The Committee also heard Éric Gourdeau and Jean-Jacques Simard, experts on aboriginal issues. Many other experts dealt with certain aspects of the aboriginal issue during their appearance before the Committee, including Daniel Turp, Henri Dorion, André Patry, Stephen A. Scott, Henri Brun and Bradford Morse. The latter prepared a comparative analysis for the Committee of Québec's treatment of the aboriginal peoples. The

Committee also asked a group of jurists[6] to study territorial issues, some of which concern the aboriginal peoples, from the perspective of Québec's accession to sovereignty. These studies and the testimony presented to the Committee contributed to its consideration of this subject.

4.3.1 The Canadian constitutional framework and aboriginal rights

Aboriginal people and the land reserved for them come under the exclusive jurisdiction of the federal government by virtue of paragraph 24 of section 91 of the *Constitution Act, 1867*. However, Québec also maintains relations with the aboriginal peoples. Provided they do not affect a treaty or federal statute concerning the aboriginal peoples, general provincial laws apply to them just as they do to other residents of Québec. In addition, it must be noted that under the Northern Québec Agreements of the 1970s, Québec assumes certain specific responsibilities regarding the Crees, Naskapis and Inuit.

The *Constitution Act, 1982* (section 35) constitutionally guarantees the existing aboriginal and treaty rights of the indigenous peoples of Canada. According to the courts, this new constitutional status protects these peoples from any legislation, federal or provincial, that could extinguish or deny these rights, or impose what are considered unreasonable limits on their application. In 1983, a constitutional amendment stated that this protection includes rights resulting from land claims settlements. The effect of these provisions was, among other things, to guarantee that the Northern Québec Agreements would not be amended without the consent of the signatory aboriginal nations. In addition, a provision of the *Canadian Charter of Rights and Freedoms* (section 25) specifies that it "shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada". This precedence is, however, tempered on one point by section

---

6. The five jurists consulted are professors Alain PELLET, of the Université de Paris X - Nanterre and the Institut d'Études politiques de Paris and a member of the United Nations International Law Commission; Thomas FRANCK, Director of the New York University Centre for International Studies; Rosalyn HIGGINS, of the London School of Economics and a member of the United Nations Human Rights Committee; Malcolm SHAW, of Leicester University, in the United Kingdom; and Christian TOMUSCHAT, of the University of Bonn, Chairman of the United Nations International Law Commission. Their opinion, entitled *L'intégrité territoriale du Québec dans l'hypothèse de l'accession à la souveraineté*, May 1992, 86 pp., is included in an Appendix to this report.

28, under which equality of the sexes takes priority over guaranteed aboriginal rights.

Since 1987, the indigenous peoples of Canda have demanded constitutional confirmation of an *inherent* right of self-government. This right would arise from the simple fact that the aboriginal peoples occupied the territory before the arrival of the Europeans.

The true scope of existing aboriginal rights and, *a fortiori*, the *inherent* right being claimed remain nebulous in some respects. Experts consider the *inherent* right of self-government is already included in section 35 of the *Constitution Act, 1982*. Moreover, the governments of Canada, of Québec, and of certain provinces are concerned about the implications of the *inherent* nature of this right. Without a framework or agreed-upon definition, this term could exempt the aboriginal peoples and their lands from the the application of federal and provincial laws, and their governments from the application of the Charter, which, ultimately, could lead to the creation of enclaves within the territory.

4.3.2 The aboriginal peoples in Québec and other provinces

A comparative assessment of the situation of the aboriginal peoples was carried out for the Committee.[7] It concluded that their situation was generally better, often significantly so, in Québec than in other provinces.

According to the study, the aboriginal peoples own much more land in Québec than in the other provinces.

The study also examines in a favourable light the fate of aboriginal languages in Québec. The author notes that eight aboriginal languages are still spoken in Québec and that the *Charter of the French Language* recognizes the right of the Amerindians and Inuit to maintain and develop their own languages and cultures, the author concludes that *"no other provincial government has made the limited yet relatively concerted efforts to support the survival of Aboriginal languages on a par with Québec [...].*[8]

---

7. Bradford MORSE, *Comparative Assessments of Indigenous Peoples in Québec, Canada and Abroad*, University of Ottawa, Faculty of Law, March 1992, 61 pp. When he appeared before the Committee, M. MORSE was accompanied by M. Jean-Yves ASSINIWI, an advisor to the Native Council of Canada.

8. *Ibid.*, p. 54.

Moreover, with regard to education, the expert notes that:

The Government of Québec has in general been far more supportive of educational initiatives, particularly for the Cree and Inuit, than any other provincial government in Canada.[9]

He believes that to date Québec has been a leader in encouraging economic development among the aboriginal peoples and in urging the recognition of aboriginal title. Concerning land claims, the expert writes:

Nevertheless, in comparison to the attitude of other provinces, Québec has adopted an overall position that can be perceived as far more favourable to Aboriginal peoples and their interests in their traditional territory.[10]

After acknowledging Québec's leadership in the encouraging aboriginal peoples to become more involved in managing their communities, the expert points to the fact that:

The Assemblée Nationale took a further bold step forward in 1985 with the adoption of a resolution in favour of the sovereignty of most of the Aboriginal nations within the province [...].[11]

However, the author adds that "this is not to suggest that the record has been outstanding, as the effects of colonization and dispossession of the Indian, Inuit and Metis peoples have been tragic beyond belief."[12]

Québec is aware of this and has recently initiated a wide-ranging public consultation to develop a comprehensive aboriginal policy with the specific objective, among others, of aboriginal self-government.

4.3.3 Concerns and positions of the aboriginal peoples

Aboriginal leaders appearing before the Committee voiced deep concern about the consequences for their rights of any change to Québec's political and constitutional status.

---

9. *Ibid.*, p. 54.
10. *Ibid.*, p. 57.
11. *Idem.*
12. *Ibid.*, pp. 59-60.

Under the existing constitutional framework, the aboriginal nations have two options for protecting their interests from provincial legislation that is contrary to their interests. The first is based on the rule whereby the Constitution invests the federal Parliament with exclusive jurisdiction for the aboriginal peoples and the lands reserved for them. The second arises from the constitutional guarantee conferred under section 35 of the *Constitution Act, 1982* on existing aboriginal and treaty rights. In the event of sovereignty, these constitutional protection measures would cease *ipso facto* to have legal effect. Clearly, they could be applied under Québec's new legal order, but they would not be renewed automatically.

Representatives of many aboriginal nations appearing before the Committee took a firm position on respect for their rights. In particular, they invoked the Canadian Constitution and principles of international law to make the point that their consent would be necessary for any change to the legal and constitutional status of Québec, to the extent that such a change affected their rights. They support this position mainly by citing the fact that Québec's secession would change the Northern Québec Agreements insofar as the signatory parties are concerned which, under section 35 of the *Constitution Act, 1982*, cannot occur without the agreement of the aboriginal peoples. Some of them also indicated that, in the event of sovereignty, the federal government should intervene to ensure respect for the rights of the aboriginal peoples, under its fiduciary obligations towards them. Other aboriginal leaders said they reserved the right to eventually declare their own sovereignty over parts of the territory of Québec, and even form an association with Canada if they consider that appropriate. Some of these positions are based on expert opinion.[13]

In the current debate over Québec's political future, these positions have a major impact. They must therefore be investigated very seriously.

Concerning the situation of the aboriginal peoples, the political aspects of the issues raised cannot be ignored. However, it should be pointed out that this report restricts itself to reviewing international law on these issues.

There is no denying that the Northern Québec Agreements cannot be changed without the agreement of the aboriginal nations that signed them. Until 1982, this guarantee, which stems from the consensual nature of the agreements, was subject to the principle of the sovereignty of Parliament.

---

13. See the testimony of the following experts who appeared before the Committee: Stephen A. SCOTT, November 26, 1991 (CEAS-249); Richard FALK, February 4, 1992 (CEAS-705); and Mary Ellen TURPEL, February 11, 1992 (CEAS-823).

Section 35 of the *Constitution Act, 1982* invested it with constitutional value. Unless the Constitution is amended, it is impossible to depart from an agreement unless the aboriginal peoples who signed it give their consent.

However, this guarantee of intangibility rests solely on the internal legal order, which would cease to apply in the wake of Québec's accession to sovereignty. International law does not contain a rule to the same effect and deems this type of guarantee to be an internal legal given (see paragraphs 1.14 and 2.03 of the opinion). The right of veto over the content of the agreements conferred pursuant to section 35 of the *Constitution Act, 1982*, may not obstruct the accession to sovereignty, which falls under the purview of international law. According to the experts, [TRANSLATION] "The Crees, Inuit or Naskaspis would be no more justified in opposing it than any other owner of property who, as a result of independence, would, for instance, no longer be able to refer to federal authorities cases where this is possible at present." (paragraph 2.34 of the opinion[14]).

Sovereignty would result in the concentration of various powers pertaining to the aboriginal peoples in the hands of the new State, as would be the case with all powers now shared by the federal and provincial governments. In the course of exercising such powers, the National Assembly could decide to put the Agreements back into force under Québec law. The Agreements would then be governed by the Québec Constitution and relevant statutes.

Although the Canadian Constitution offers a guarantee to the aboriginal peoples who are part of the Northern Agreements that the withdrawal of one of the parties, i.e. the federal government, may not take place without their consent, such a guarantee may not be construed, without confusing international and internal law, as a protection granted to the aboriginal peoples against the modification of Québec's political status.

On the other hand, according to the experts consulted, the agreements with the aboriginal peoples are instruments *sui generis* which, despite the name, do not constitute treaties as understood by international law (paragraph 3.23 of the opinion). The Supreme Court of Canada perceived these agreements in the same way.[15] Consequently, if the National

---

14. In the following pages, the opinion refers to the text of Alain PELLET *et al.*, *op. cit.*

15. *R.* v. *Sioui*, [1990] 1 S.C.R. 1025.

Assembly of a sovereign Québec reinstated the Northern Québec Agreements, they would be seen under international law as internal legal facts, as is currently the case (paragraphs 1.14 and 2.03 of the opinion).

As for the federal government's fiduciary obligations to the aboriginal peoples of Québec, it goes without saying that such obligations would cease were the Canadian Constitution to no longer apply in a sovereign Québec, as such obligations arise from the legal interpretation of the relevant provisions of the federal *Constitution Acts*.

Concerning the possibility that the aboriginal nations could declare their own sovereignty, the experts write that contemporary international law tends to recognize that they have extended rights to their ancestral lands and territories. However, they add that [TRANSLATION] "regardless of the legal value of the texts reflecting this tendency, they stop short of recognizing that these lands and territories have a separate status distinct from that of the territory of the State, and these rights are in no way similar to rights of sovereignty" (paragraph 3.31 of the opinion)[16].

According to the opinion, the aboriginal peoples may invoke the right of self-determination, but it does not confer a right of independence on them. The exact content of a people's right of self-determination depends on circumstances. Two terms determine the essential components of this right: *identity* and *democracy*. The study indicates that this right:

TRANSLATION [...] *signifies both the right to one's own identity, the right to choose and the right to participate: "It also, at least for now, stopped being a principle of exclusion (secession) and became one of inclusion: the right to participate. The right now entitles peoples in all states to free, fair and open participation in the democratic process of governance freely chosen by each state."*[17]

The application of this principle of self-determination to the situation of the 62 000 aboriginal people in Québec appears to be in perfect continuity with what was initiated here in the 1970s. Québec has already recognized the specific identity of the aboriginal nations. Their participation in collective and public life is based on legal guarantees, and is encouraged. The ability of the aboriginal peoples to make choices will continue to grow provided agreements with government parties invest them with a

---

16. See section 4.4 of this Report.

17. See the opinion of Alain PELLET *et al.*, *op. cit.*, p. 53.

greater degree of self-government now and in the future. Regardless of Québec's political and constitutional status, that trend will continue.

4.3.4 Options

Should Québec become sovereign, two main options for relations between the State and the aboriginal nations would be open i.e., the continuation of rights currently enshrined in the Canadian system, or a redefinition of relations between the State and the aboriginal nations, in concert with the aboriginal people themselves.

The first option would perpetuate the current model. Québec would take responsibility for the fiduciary obligations currently assumed by the federal government. Aboriginal and treaty rights would be recognized and confirmed, and would take precedence over the provisions of a charter of human rights. Some may see this as the more reassuring model in the short term, though the exact legal scope of existing constitutional guarantees is not known. Overall, this regime raises such problems that neither governments nor the aboriginal peoples now accept the *status quo*. A Royal Commission on the aboriginal peoples was set up in 1991 to advance the debate and recommend possible solutions by 1994.

The second option involves a redefinition of the relations between the State and the aboriginal nations, in concert with the aboriginal peoples themselves. Its objective would be to build a constitutional system whereby the aboriginal nations could exercise genuine self-government to preserve their cultural values, while taking part in the life of the community. For instance, this could involve a public governance model under which the government would exercise powers and responsibilities in certain areas. It would receive global and unconditional transfers of funds and enjoy regional or local taxation authority to assume genuine responsibility for its management of public affairs. In addition, the aboriginal peoples should have a role in the process of amending the Constitution of a sovereign Québec.

Regardless of which approach is chosen, stable relations enjoying broad acceptance must be developed between the State and the aboriginal nations. This requires the participation not only of the State, but also, if not more so, of the aboriginal peoples themselves. Should sovereignty for Québec be approved in a referendum, it would be important that the aboriginal nations participate as much as possible in defining their political status in the new State.

Beyond the law, the testimony of aboriginal representatives leads the Committee to the conclusion that, unless there is prior agreement with the aboriginal peoples, Québec's accession to sovereignty will generate more problems in relations between the aboriginal nations and the rest of Québec society.

4.4 Territory

Like the people, territory is one of the constituents of a sovereign State. Québec's accession to sovereignty would raise the following question: What would be the extent of Québec's territory? More specifically, would it coincide with the province of Québec's current borders as they are defined in the Canadian constitutional order? In view of the question's importance and legal complexity, the Committee sought the opinion of the international group of jurists mentioned earlier. The Committee also invited three Québec jurists, Henri Dorion, Stephen A. Scott and Henri Brun, to discuss the issue of territory under the assumption that Québec becomes sovereign. Other witnesses who appeared before the Committee also dealt with this issue: André Patry and the aboriginal chiefs Jean-Maurice Matchewan, Ovide Mercredi and Matthew Coon Come. The Committee also examined the testimony given by Gordon Robertson and Bradford Morse to the Committee to Examine any Offer of a New Constitutional Partnership. In addition, the Committee commissioned the jurist Jonathan I. Charney to do a study of the maritime borders of a sovereign Québec. These studies and the testimony contributed to the Committee's analysis of this issue.

4.4.1 Territorial land

Québec entered the Canadian federation with the territory of Lower Canada under the Union. Section 146 of the *Constitution Act, 1867* states that changes to the borders of the Dominion of Canada were to be ratified by British orders-in-council. Section 3 of the *Constitution Act, 1871* confirmed the authority of the federal Parliament over changes to Canada's internal borders, provided the provincial legislative assemblies concerned assent to the amending legislation.

Under the latter procedure, Québec's territory was extended, in 1898 and 1912, to the shores of Hudson Bay, Hudson Strait and Ungava Bay, by two statutes of the Parliament of Canada, which in turn were agreed to by two statutes of the Parliament of Québec.[18]

Section 43a of the *Constitution Act, 1982* entrenches the requirement that the provinces concerned consent to the alteration of an interprovincial

---

18. *An Act respecting the north-western, northern and north-eastern boundaries of the province of Quebec*, S.Q. 1898, c. 6 and S.C. 1898 (61 Vict.), c. 3, and *An Act to extend the Boundaries of the Province of Quebec by the annexation of Ungava*, S.Q. 1912, c. 7 and S.C. 1912 (2 Geo. V), c. 45.

border. Yet section 43 does not repeal, either expressly or implicitly, section 3 of the *Constitution Act, 1871*, which remains in force and continues to apply to borders other than interprovincial ones. Under the current constitutional order, Québec's territory could not be reduced to the advantage of federal territory or that of another province, just as it could not be expanded to their detriment, without the consent of the National Assembly. Québec's territorial integrity is therefore guaranteed under the Canadian federation.

Should Québec become sovereign, Canadian law would cease to apply on Québec territory. The territorial integrity of Québec would no longer depend on the rules of Canadian constitutional law, but on those of international law. To obtain a better grasp of the current state of international law on the issue, the Committee asked for a joint opinion from five eminent jurists.[19]

This opinion answers the following two questions formulated by the Committee Secretariat:

Question 1

Would the borders of a sovereign Québec be the existing borders, including the territories attributed to Québec by the 1898 and 1912 federal statutes, or those of the province of Québec at the time the Canadian federation was formed in 1867?

Question 2

Assuming Québec becomes sovereign, would the principle of territorial integrity (or *uti possidetis*) prevail under international law over claims for the dismemberment of Québec territory, more specifically:

- the claims of the aboriginal peoples in Québec who invoke the right of self-determination of peoples as understood in international law;

- the claims of the English-speaking minority, particularly concerning the areas in Québec where it is concentrated;

- the claims of persons, regardless of their ethnic origins, living in certain border regions of Québec?

---

19. Opinion of Alain PELLET *et al.*, *op. cit.*

The group of experts gave the following answers:

Question 1

[TRANSLATION] *The borders of a sovereign Québec would be the current borders and would include the territories attributed to Québec by the 1898 and 1912 federal statutes, unless the province agreed otherwise before independence, or the two States agreed to some other arrangement after independence.*

Question 2

[TRANSLATION] *Assuming Québec becomes sovereign, the principle of legal continuity (absence of* vacuum juris*) supports the territorial integrity of Québec, which is guaranteed both by Canadian constitutional law and international public law, over claims for the dismemberment of Québec, whether urged by:*

- *the aboriginal peoples of Québec, who enjoy minority rights and the rights indigenous peoples are acknowledged to enjoy under contemporary international law, without giving rise to any right of secession*

- *the English-speaking minority whose protection under international law has no territorial effect, or*

- *persons living in certain border regions of Québec who, as such, enjoy no particular protection as far as international law is concerned.*

Application of the principle of succession to existing territorial frontiers at the time of accession to independence gives added weight to these conclusions.

A) The 1898 and 1912 statutes

The group of experts rejects the thesis that Québec would lose the territories attributed to it in 1898 and 1912.[20] Citing the jurisprudence of the International Court of Justice and recent practice in cases of accession to sovereignty in a non-colonial context, the opinion states that

---

20. See paragraphs 2.28 to 2.34 of the opinion.

historical considerations are irrelevant to the determination of a new State's borders. International law does not apply retroactively to a new State, but as it stands with its existing territorial boundaries at the time it becomes sovereign.

The group of experts indicates that new States resulting from secession from a preexisting State have retained, as did States that emerged from decolonization, their prior administrative boundaries. In the case of States that have recently emerged from the dismantling of Yugoslavia and the Soviet Union, [TRANSLATION] "the international community demonstrated quite firmly its conviction that a rule exists and must be respected" (see paragraphs 2.32 and 2.47).

Some observers have maintained, before the Committee and elsewhere, that the territory of a sovereign Québec could not include the territories attributed to Québec under the 1912 statute since, they claim, Québec would then fail to satisfy a condition of section 2c of that statute to the effect that Québec recognizes the rights of the aboriginal peoples in this territory and obtains their surrender.[21] This condition was formulated in these terms:

[t]he province of Québec will recognize the rights of the Indian inhabitants in the territory above-described to the same extent, and will obtain surrenders of these rights in the same manner, as the Government of Canada has heretofore recognized such rights and has obtained surrender thereof, and the said province shall bear and satisfy all charges and expenditure in connection with or arising out of such surrenders;

The group of experts considers it far from certain that the non-fulfilment of this condition, were it to be demonstrated, would result in the transfer being invalidated (paragraph 2.12).

Be that as it may, the question no longer arises since section 2c was repealed by the *James Bay and Northern Quebec Native Claims Settlement Act*[22], passed by the federal Parliament to give effect to the James Bay Agreement. In 1976, the Parliament of Québec gave its consent to the repeal of this legislation in the *Act approving the Agreement concerning James Bay and Northern Québec*.[23] The validity of this legislation is not

---

21. The 1898 statute does not contain a similar provision.

22. S.C 1977, c. 32.

23. R.S.Q., c. c-67.

in doubt since, like section 2c of the 1912 statute it amends, it was passed in accordance with section 3 of the *Constitution Act, 1871*.

According to the group of experts,

[TRANSLATION] [f]*rom that point forward, regardless of its initial scope, the 1912 condition has no legal existence and the territories then ceded became, without restriction, an integral part of the territory of Québec* (paragraph 2.12).

B) The American border

The group of experts makes a distinction between the border between Québec and the United States, and the eventual Canada-Québec borders. The first, along Québec's southern frontier, is already an international border. It would be maintained through the rule of the succession of States as it pertains to territorial boundary treaties. It is well-established that a new State inherits the international boundaries established previously by the State responsible for such territory (paragraph 2.22). In this case, the legal continuity is complete and requires no expression of assent by the States concerned or the international community. Québec could therefore avail itself of the provisions of the 1842 British-American and 1908 Canada-U.S. treaties that fixed its southern border, and would have to comply with it. Québec and the United States would clearly remain free to amend their common border in a new treaty.

C) The Canada-Québec borders

A combination of elements ensures the inviolability of the land borders between Canada and Québec: an effective secession, the principle of territorial integrity and the principle of legal continuity (or absence of *vacuum juris*, to use an expression employed by the group of experts) (paragraphs 2.16 to 2.19 and 2.39 to 2.43).

A secession is a political fact concerning which the law ventures no further than to acknowledge its existence. International law draws the legal consequences of secession when it results in the establishment of effective and stable public authorities that control the territory and the population established thereon (paragraph 2.40). Citing with approval a study by Professor José Woehrling for the Bélanger-Campeau Commission, the group of experts writes that [TRANSLATION] "the secession would be considered a success if the authorities of Québec

managed to exclude the application of Canadian law on their territory and, on the contrary, succeeded in having the legal order arising from their own legislation and decisions prevail for a sufficiently long period of time" (paragraph 2.41).

Of course, this condition of effectiveness would be fulfilled if the Canadian government accepted the secession and recognized a sovereign Québec. The group of experts feels it would be fulfilled even if the federal government were to oppose the secession (paragraphs 2.39 and 2.41). Effectiveness is judged from an overall standpoint. It is graduated and can be judged subjectively. [TRANSLATION] "The consistency of the territory, its geographic situation, its accessibility, its climate and its population density are all factors that must realistically be taken into account" (paragraph 2.43). In particular, these elements would come into play in judging the effectiveness of the State's power in the northern part of Québec, an arctic zone that is difficult to reach and sparsely populated (paragraph 2.43).

If effectiveness were established, independence would extend to all of Québec's existing territory (paragraph 2.43). Effectiveness would give rise to the application of the principle of territorial integrity, which is firmly established in international law (paragraphs 2.16 to 2.19 and 2.39).

The group of experts presented a subsidiary argument supporting its conclusion (paragraphs 2.44 to 2.50). It concerns the principle of *uti possidetis juris*, advanced by some witnesses before this Committee and, in 1990, before the Commission on the Political and Constitutional Future of Québec.[24] According to this rule, both the internal and external borders established by a predecessor State bind a successor State and may be invoked by the latter, whether they originated in an international treaty, a domestic law or a unilateral act (paragraph 2.45).

The principle of *uti possidetis* is a product of decolonization. It was recently extended and strengthened in the 1986 decision of the International Court of Justice in the Case of the Frontier Dispute between Burkina Faso and the Republic of Mali, as well as in the January 11, 1992 opinion given by the Arbitration Committee of the European Community Conference on Yugoslavia, concerning the borders of Croatia and Slovenia

---

24. See, in particular, the testimony of Henri DORION, October 17, 1991 (CEAS-149); André PATRY, November 7, 1991 (CEAS-200); and Henri BRUN, November 26, 1991 (CEAS-264) before the Committee. See also the testimony of Jacques-Yvan MORIN before the Bélanger-Campeau Commission, December 13, 1990, *Journal des débats*, p. 1461.

(paragraph 2.46). The group of experts believes the principle has been put into general practice and that it is not unreasonable to treat it as a rule of customary international law (paragraphs 2.47 and 2.48).

D) The aboriginal peoples and minorities

The group of experts then examined the position of the aboriginal peoples of Québec, who claim a right of self-determination as understood in international law, and the rights of minorities in a sovereign Québec (paragraphs 3.01 to 3.31). The group is of the opinion that, even if the aboriginal peoples, the English-speaking minority or other groups could invoke a right of self-determination, or other similar right, it would not include a right of secession. Only colonial peoples, defined as the population of a non-autonomous territory and recognized as such by the United Nations, enjoy a right to independence if they so wish (paragraphs 3.06 and 3.08). [TRANSLATION] "It is clear that such is not the position of Quebecers, or of the various minorities, in particular the aboriginal and English-speaking minorities, on the territory of Québec" (paragraph 3.06).

The right of peoples to self-determination is not limited to a category of peoples. Its specific consequences depend on circumstances, but very rarely involve a right of independence. However, it always means that a people has the right to paticipate in the political, economic, social and cultural choices that concern it (paragraphs 3.07 and 3.08).

Regarding the aboriginal peoples more specifically, the group of experts believes it enjoys a general right of self-determination, but they are not thereby legally entitled to refuse to have their territory incorporated into that of a sovereign Québec.

[TRANSLATION] *Unlike the situation of the non-aboriginal minorities, contemporary international law tends to recognize that these peoples have extended rights over their ancestral lands and territories. However, regardless of the legal value of the texts reflecting this tendency, they stop short of recognizing that these lands and territories have a separate status distinct from that of the territory of the State, and these rights are in no way similar to rights of sovereignty* (paragraph 3.31).

The other minorities in a sovereign Québec could invoke international law in some regards, particularly to maintain their cultural identity, but international law does not confer territorial rights on them (paragraphs 3.17 to 3.21).

In short, unless the new sovereign State were to expressly authorize a change to its borders, its territory would coincide with the territory it held as a province in the Canadian federation once its state authorities are effective and stable, control the territory of Québec and ensure that the population is subject to a legal order arising from Québec laws and decisions, and not from those of Canada. In addition, the aboriginal peoples and minority groups within a sovereign Québec could not legally jeopardize the territorial integrity of a sovereign Québec.

As for the eventual borders between a sovereign Québec and Canada, the group of experts makes a distinction between maritime borders and land borders (paragraphs 2.35 and 2.36). It notes that the rules for the succession of States that apply to Québec's land borders cannot necessarily be transposed to the delimitation of maritime borders. Even though Québec's coastal waters are now considered Canadian inland waters, the principles applicable to the succession of States would not stand in the way of universally accepted rules concerning the attribution of marine zones. On the contrary, the group of experts believes, that, like any sovereign State, Québec could [TRANSLATION] "invoke these rules and argue its "inherent right" to territorial sovereignty or to sovereign rights over the waters off its coasts" (paragraph 2.36).

4.4.2 Territorial waters

Delimiting the boundaries of Québec's territorial waters raises different problems for the waters to the north and the south of the territory. The complexity and importance of the issue prompted the Committee to commission a study dealing specifically with this point.[25]

A) Southern waters

Québec is bounded to the southeast by the Gulf of St. Lawrence. Since 1763, as a result of the Royal Proclamation, Québec's territory includes the St. Lawrence River as far as Île d'Anticosti. In addition, in 1851, a British statute granted Québec the northern portion of the baie des Chaleurs, as far as its mouth in the Gulf of St. Lawrence. As far as the Gulf is concerned, in view of the absence of explicit Canadian legislation, it is not certain as to whether it is part of Canadian inland waters or the

---

25. Jonathan I. CHARNEY, *The Maritime Boundaries of Québec*, Vanderbilt University, Tennessee, March 1992, 100 pp.

high seas and, in the former case, whether it is federal territory or shared by the coastal provinces.

Internationally, the Government of Canada has claimed the Gulf as Canadian inland waters, on the basis of historic title. Domestically, Québec considers that its territory extends to the point of equidistant shores, in accordance with an agreement reached in 1964 with the other coastal provinces. Though the federal government has not ratified this agreement, it made use of its demarcation line in a 1977 agreement on offshore resources with Nova Scotia.

The study carried out for the Committee concludes that the Gulf is not historic waters, for the reasons outlined below.

Firstly, Canada has never drawn straight baselines[26] to close off this body of water. Secondly, Canada's claims have been contested by American and French authorities. Thirdly, Canadian ministerial statements on the subject have been far from unanimous in indicating an appropriation of these waters by Canada. Fourthly, until 1949, there were two coastal States (Canada and Newfoundland, then a British colony) which did not jointly claim these waters. The development of the historic title since then is of insufficiently long standing to justify such status. Fifthly, the various Canadian statutes passed to regulate navigation in the Gulf do not constitute the appropriate legal regime pertaining to inland waters, but, rather, resemble the regime governing an exclusive economic zone. Lastly, two recent Canadian legal decisions have confirmed that the Gulf is not inland waters. The study therefore concludes that, under current law, the Gulf constitutes international waters.

---

26. See sections 5 and 7 of the 1982 Law of the Sea Convention which restates the decision in the *Fisheries Case* (United Kingdom v. Norway), Decision dated December 18, 1951, I.C.J. *Rep.* 1951, p. 116 *et seq.*, taken from Pierre Michel EISEMANN *et. al.*, *Petit manuel de la jurisprudence de la Cour internationale de Justice*, Paris, Pédone, 1984, pp. 33-37.
[TRANSLATION]
The third method, adopted by many States and to which many other States have not objected in principle, consists in selecting appropriate points on the low-water mark and drawing straight lines between them; for this reason, it is called the straight baseline method. [...]
If the boundary is set unilaterally, it can be opposed under international law. There are various fundamental considerations in this regard. The baselines must not deviate significantly from the general direction of the shore, whose configuration results from the intimacy between land formations and the sea. Lastly, the economic interests of each region must be taken into consideration.

Customary international law recognizes that a coastal State has an inherent right to a territorial sea, a contiguous zone and a continental shelf, as well as an exclusive economic zone. This statement is based on the traditional adage, repeated in various decisions of the International Court of Justice: [TRANSLATION] "the land dominates the sea". Consequently, a sovereign Québec would be attributed a twelve-mile territorial limit in the Gulf, a contiguous zone extending a further twelve miles, a continental shelf and an exclusive economic zone of 200 miles. Since the Gulf is less than 400 nautical miles wide, a partition would be necessary. *A priori*, this should be carried out according to the equidistant shores principle. This approach was applied in the 1964 Interprovincial Agreement and again, in 1977, by the federal government in an agreement with Nova Scotia.

Subsidiarily, the partition could be effected on the basis of equity, as defined by the jurisprudence of the International Court of Justice. As a result of such partition, the Îles-de-la-Madeleine might not be considered an extension of Québec territory for purposes of locating the equidistant line. Under this hypothesis, these islands would be surrounded by territorial waters extending twelve miles. Nonetheless, they would have a point of contact with Québec's exclusive economic zone north of the archipelago.

In view of the above, the actual delimitation of the boundaries of these waters in the Gulf would require an agreement with Canada.

B) Northern waters

Under the 1898 and 1912 statutes extending Québec's territory to Hudson Bay, Hudson Strait and Ungava Bay, the shoreline determines this segment of the border. The term "shoreline" has been interpreted in the Northern Québec Agreements, signed by Canada and Québec, as referring to the low-water mark.

Canada claims the two bays and the strait as inland waters, on the basis of historic title. The Hudson's Bay Company administered these territories until the second half of the 19th century, i.e before their transfer to the Crown in right of Canada in 1870. In 1906, Canadian legislation recognized Hudson Bay as territorial waters. In 1937, the Canadian government decreed that straight baselines would be drawn on maps at the mouth of Hudson Strait to close off the Bay. These maps were never published. In 1985, the federal government officially closed off the Arctic archipelago, thus including the northern seas. While this

decision prompted a negative reaction from certain States, their recent practice suggest they would have acquiesced implicitly, given their short-lived opposition.

While the study readily concludes that Hudson Bay constitutes inland waters, it is more equivocal concerning Hudson Strait and Ungava Bay. Professor Charney bases the latter view on the frequent passages between 1948 and 1957 of American icebreakers on manoeuvre, contrary to Canada's stated sovereignty and without Canada's permission. In addition, Hudson Strait provides access, albeit rarely used, to the Northwest Passage in which various States want to maintain freedom of navigation.

As has already been mentioned, the international group of experts the Committee consulted is of the view that, while the northern waters can be considered Canadian inland waters, Québec could be attributed an extension of its territorial waters in them. They base this opinion on the fact that:

[TRANSLATION] *the rules for the succession of States that apply to Québec's land borders cannot necessarily be transposed to the delimitation of maritime borders.*

This leads the group to conclude that:

[TRANSLATION] *assuming Québec becomes sovereign, it could argue that these rules apply and claim its* inherent right *to territorial sovereignty or to sovereign rights over the waters adjacent to its coasts.*[27]

Professor Charney states in his study that, under section 7.6 of the 1982 Convention on the Law of the Sea, a sovereign Québec could challenge any baseline drawn relative to Hudson Bay and Hudson Strait and to Ungava Bay since it would cut off Québec's territorial sea from the high seas. In addition, Québec's emergence as a new coastal State could reopen the issue of the status of these maritime zones. As a result, these zones could lose their status, if any, of Canadian inland waters on the basis of historic title. Québec would then be justified in claiming significant increases in its territorial waters. The equity principle should govern the partition of these zones.

---

27. Alain PELLET *et al.*, *op. cit.*, paragraphs 2.35 and 2.36.

In addition, assuming Québec becomes sovereign, it could lay claim to the islands adjacent to its shores.[28]

Subsidiarily, if Hudson Bay, Hudson Strait and Ungava Bay were considered historic waters, and therefore deemed to be Canadian inland waters, it would be necessary to ascertain whether these waters come under the joint jurisdiction of the coastal States, similar to the legal regime applicable to Gulf of Fonseca, in Central America.

However, some experts maintain it could be difficult for Québec to claim additional territory in these waters since they would be similar to Canadian territorial land. Should this northern portion of Québec be cut off, Québec would have a right of passage in transit over Canadian territory under international law. The practical details of this right would have to be negotiated with Canada.

In view of the contiguousness and interdependence of the maritime zones of Québec and Canada, a negotiated solution would be required.

4.4.3 Arbitration of border disputes

Should negotiations on the delimitation of maritime zones not produce an agreement, a sovereign Québec and Canada, according to the traditional practice of States, could invoke arbitration by joint commissions or the International Court of Justice. Such recourse would be an implicit recognition by Canada of Québec, in the event formal recognition had still not been achieved. Even if Québec were still not a member of the United Nations, it could submit a dispute to the International Court of Justice. Canada and Québec would first have to accept the jurisdiction of the Court and agree to abide by its decision. The dispute would then be judged on the basis of international public law governing the relations between two States.

Examples include the recent arbitration between Canada and France concerning the continental shelf around the Saint-Pierre-et-Miquelon archipelago, and the 1984 arbitration by a special chamber of the International Court of Justice of the delimitation of the maritime boundary in the Gulf of Maine between Canada and the United States.

---

28. See the testimony of Henri DORION, October 17, 1991 (CEAS-154), before the Committee, and the study by Professor CHARNEY, *op. cit.*, pp. 92-93.

4.5 Institutions

Professors Nicole Duplé and Jacques-Yvan Morin, offered the Committee their proposals on the Constitution and fundamental political institutions of a sovereign Québec. Their work contributed to the Committee's consideration of the matter.

Internally, Québec already has the political institutions of a sovereign State In the fields determined by the Constitution, these institutions exercise state power over the territory of Québec. They are governed by "a Constitution similar in Principle to that of the United Kingdom" (*Constitution Act*, 1867, preamble) and still retain the essential features of the British parliamentary system, the keystone being what is termed the "sovereignty" of Parliament. The expression signifies the latter's supremacy in the State. It refers to a relation between the Monarch and the representatives of the people that has evolved in successive stages, almost without interruption. The seat of sovereignty in the State has thus passed gradually from the person of the sovereign to the institution representing the State as a whole. However, the Crown remains the formal symbol of the permanence of the State, externally, and of the person of the State, internally.

This constitutional system, based, among other things, on British statutes, customs and constitutional conventions, would cease to have effect in Québec in the event of sovereignty. According to the rules of international law on the succession of States, in the event of secession, legal continuity would not apply insofar as public law is concerned. An effective secession following a referendum in favour of sovereignty would mean that the people have withdrawn authority to exercise state powers on their behalf from the agents instituted under the existing constitutional system. That is why all political institutions, federal and provincial alike, would cease to have authority on Québec territory as soon as Québec becomes sovereign.

Whether secession is effected pursuant to an agreement with Canada or unilaterally, a new attribution of state powers would be required. That would involve a process by which the people of Québec, either through their representatives or directly, would institute new agents and empower them to exercise on its behalf the powers needed to carry out executive, legislative and judicial functions.

The process of developing a new constitutional order must first be considered, followed by an examination of the effects of sovereignty on the role of political institutions.

4.5.1 The new constitutional order

Internally, Québec already has its own constitution, i.e. a set of rules that determine the form of government and relations between citizens and public authorities. These rules are found in various statutes, e.g. the *Act respecting the National Assembly*, the *Elections Act*, the *Charter of human rights and liberties*, constitutional conventions such as the role of the prime minister, and parliamentary usage. They all probably fall under the jurisdiction of the Parliament of Québec, which can amend them with a law passed by a simple majority, except for rules concerning the office of the Lieutenant Governor. Section 41 of the *Constitution Act, 1982* requires the unanimous consent of the Senate, House of Commons and provincial legislative assemblies to amend this function. However, that is the only component of Québec's internal constitution with such protection. With that proviso, Québec's constitution is similar, in form, to that of the United Kingdom. Would this form be maintained by a sovereign Québec?

A) The form of the constitution

In the event of sovereignty, the Parliament of Québec could certainly adopt a similar constitution by reinstating relevant legislation and making current conventions and usages applicable. However, the two experts heard by the Committee on the subject indicated that a change in Québec's political status would require a formal constitution clearly stating the fundamental rules of the new State.

Obviously, the legitimacy of such a constitution should be derived from a broad consensus among the population. Appropriate mechanisms should ensure extensive participation by the people's representatives, and provide that the final text be submitted to the people for its approval by referendum. According to the two experts who appeared before the Committee, it would be best to implement this important and complex undertaking in two stages. A provisional constitution would be adopted to be followed, once sovereignty is achieved, by a permanent constitution.

B) The provisional constitutional order

The purpose of adopting a provisional constitution would be to put a minimum constitutional structure in place as of the day sovereignty is achieved until the proclamation of a permanent constitution. The provisional regime would quickly ensure the stability and continuity of

legal relations while postponing the fundamental discussions on the organization of public powers. It would set out the basic legal rules to ensure that moving from the status of a federated State to that of a sovereign State does not create a legal vacuum with respect to the foundations of political institutions and relations between citizens and the State. A provisional constitution should also stipulate how it can be amended, replaced or made permanent.

The text could be prepared by a parliamentary commission with the help of experts and then submitted in the National Assembly for adoption. It should obviously be finalized before sovereignty is achieved. One expert suggested that it be finalized before the referendum on sovereignty is held, and put to the voters at that time.

In principle, the legitimacy of an undertaking in a State where the people is sovereign requires that the people be consulted and approve the undertaking. A provisional constitution drawn up by the National Assembly, were it not proposed at the time of the referendum or submitted to the people for approval before sovereignty is achieved, would gain in legitimacy if it were prepared pursuant to an explicit mandate from the people. This mandate could be obtained from an affirmative referendum result provided the supporters of sovereignty had proposed it explicitly during the referendum debate, specifying the basic principles of the provisional constitution.

C) The permanent constitutional order

The procedure for the definitive institution of a constitutional regime must be more solemn and more exacting than the procedure for passing legislation. It was suggested that at this stage, the constituent power could be turned over to either of two representative assemblies: the National Assembly or a so-called constituent assembly composed of persons elected or appointed specifically for this purpose. The two experts also indicated that a referendum is desirable. Under the existing political system, a referendum cannot be binding, because such a procedure would violate the principle of the sovereignty of Parliament and, of course, affect the office of the Lieutenant Governor. In a State where sovereignty rests, in principle, with the people, approval of any constitutional measure by referendum could be required.

In addition, adoption and amendment procedures that would help secure a broad consensus for the constitution could be considered. For instance, on certain issues, the decision could require qualified majorities. To

foster the equitable treatment of the collective rights of minorities, a mathematical majority, even if close to unanimity, would not of itself provide a substantial guarantee. A mechanism for the participation of minority groups as such in the constitutional process when their interests are involved might be necessary. Such a procedure could be contemplated in the case of the English-speaking minority and the aboriginal nations whose rights are currently constitutionally guaranteed. Finding a measure that provides reasonable protection for the legitimate interests of minority groups would be the most significant challenge in the permanent institution of the new constitutional order.

On the whole, the permanent process of adopting and amending the constitution should be rigid enough to ensure a stable constitutional order, yet sufficiently flexible to reflect changes in the social contract.

D) Content of the constitution

The formal constitution of a sovereign Québec would be designed mainly to recognize the sovereignty of the people, to institute the organs for exercising state powers on behalf of the people, and to define the role and powers of each such organ. It would probably also include a description of the territorial basis of Québec and an amending procedure. The experts consulted maintain that a charter of basic rights should also be incorporated. This charter could have provisions guaranteeing the rights of English-speakers, the cultural communities and the aboriginal peoples.

The experts also believe Québec should retain the essentials of its existing institutions and amend them only where required by the new political status. Such *de facto* continuity would be reassuring and would avoid upsetting too many things at once.

Finally, despite the secession, the constitution should provide for the continuation of the prior public law until it is amended by the new competent authority, except where it is incompatible with the new order. A thorough examination of the law applicable in areas of federal jurisdiction on the territory of Québec before sovereignty would be required to determine the extent of such incompatibility.

4.5.2 Institutional continuity

The constitution of a sovereign Québec could likely retain many of the rules that currently apply to the exercise of the executive, legislative and

judicial powers under the Canadian constitutional order. It could deal in a similar way with relations between bodies responsible for exercising these powers. However, by bringing the constitutional monarchy to an end, sovereignty would probably require the replacement of the Queen's representative and the determination of the role of the new head of State in the exercise of the executive and legislative powers. The organization and operation of the courts, which currently are partially under the jurisdiction of the Parliament of Canada, would have to be substantially modified.

A) The executive function

If the constituents decided to maintain a constitutional monarchy in Québec, they could re-designate the Queen as head of State and chief executive. If such were the case, the constitution of Québec could import the prerogatives and powers of the Governor General of Canada and renew the constitutional conventions governing their application under the parliamentary system.

A more likely hypothesis is that a republican system would be instituted. The constituents would then have to create a new institution to exercise the function of head of State and provide the legal and political personification of the new sovereign State. Decisions would be required on how the incumbent of the office is appointed, the nature of his role and extent of his powers, both domestically and in terms of foreign relations.

Assuming a parliamentary system is maintained, the powers, rights and obligations of the Crown could be invested in the new head of State. The legal notion of the State would then replace that of the Crown.

The method of designating the head of State should, of course, take the nature of his powers into account. A symbolic head of the Executive, similar to the Governor General, should not be elected by universal suffrage because such an election could threaten institutional equilibrium. The legitimacy of the office could be ensured by an appointment made by a qualified majority of deputies, as is done in Italy. On the other hand, popular election would be required in a "presidential parliamentary" system like the French system and, even more so, in an American-style presidential system.

On achieving sovereignty, the jurisdiction of the executive office would expand. The administrative consequences of this change are explained in the second part of this report.

B) The legislative function

Sovereignty would not, as such, entail changes to the organization of the legislative function, with the exception of a new effective head of State. The National Assembly could therefore be reinstituted as it now exists. Together with the new head of State, it would form the Parliament of Québec that would exercise legislative power. Practically all the rules of the *Act respecting the National Assembly* could be retained by substituting the new head of State for the Lieutenant Governor.

Parliament's material jurisdiction would obviously be increased by the areas currently under the jurisdiction of the Parliament of Canada. This would render null and void the territorial representation mandate of Senators and federal Members of Parliament from Québec.

Since sovereignty would not require changes to territorial land, the composition of the National Assembly could remain unchanged initially and electoral legislation could be retained with minor adjustments. However, there would be the question of special representation of minorities and aboriginal peoples in the National Assembly or an upper house of the Parliament of Québec.

C) The judiciary

Should Québec become sovereign, the courts constituted by federal legislation would lose jurisdiction in Québec. This would include the Supreme Court of Canada, the Federal Court of Canada and the many administrative tribunals that exercise quasi-judicial authority in areas of federal jurisdiction such as interprovincial transport, telecommunications, the aeronautics industry, and so on.

As for courts constituted under Québec statutes, it seems clear that the Québec Court of Appeal and Québec Superior Court would also lose authority since their judges are appointed by the federal government under a statute of the Parliament of Canada. It should also be noted that the procedure governing the operation of criminal courts would no longer apply, since it is stipulated by federal statute.

Courts constituted by a Québec statute and whose judges are appointed by the Gouvernement du Québec, such as the Court of Québec, municipal courts and administrative tribunals under the exclusive jurisdiction of the Parliament of Québec, could be maintained under the law of succession

of States. However, legal security would surely require that the issue be settled through explicit legislation.

The justice system has three levels in civil and criminal law. The Supreme Court of Canada is the court of final appeal on questions of law. To maintain these three levels of jurisdiction after achieving sovereignty, Québec would not only have to reconstitute the Superior Court and Court of Appeal, but also create a new supreme court to hear final appeals of decisions handed down by the Court of Appeal. In addition, new administrative tribunals would have to be constituted to assume the jurisdiction of federal administrative tribunals that would no longer exist.

Provision would also have to be made for the appointment of judges to the Court of Appeal and the Superior Court. Existing incumbents could certainly be reappointed if they so desire. Judges currently appointed by the Gouvernement du Québec could also be reappointed.

If the rule of law is to be maintained in a sovereign Québec, the independence of judges would have to continue to be guaranteed. This principle could be made explicit in the formal constitution.

Upon being appointed under the new constitution, all judges would certainly have to swear allegiance to the new State. That would dispel any ambiguity concerning the effective application of the new legal order.

4.6 International personality

As a province, Québec has established a separate network of delegations abroad and concluded international agreements in its areas of exclusive jurisdiction. It has also fashioned a place for itself within international French-language institutions. Nonetheless, Québec is not a subject of international law; international legal personality belongs exclusively to Canada.

With sovereignty, Québec's legal personality would undergo a radical change: it would acquire the status of a subject of international law. The primary effect of this transformation would be that the rules of international law would apply directly to Québec.

Should Québec become sovereign, it could act exclusively at the international level and conclude any type of agreement or treaty it wishes with other States. In addition, it would participate in various international organizations. To do so, it would first have to be recognized and develop a diplomacy that reflects its international objectives. To explain this situation, this section deals with two points: international recognition and participation in the international community.

4.6.1 International recognition

Jurist André Patry was asked by the Committee to study the issue of international recognition. Daniel Turp, Edward McWhinney and Joseph T. Jockel also dealt with the subject when they met with the members of the Committee.

Should Québec become sovereign, a declaration of sovereignty would not be enough to establish international relations. A new State must first be recognized. As far as international law is concerned, a new State exists once it combines the following three constituent elements: a territory, a population, and a government that can effectively control the territory, exercise public authority over the population and conduct international relations. Québec would not have to be recognized by the other members of the international community to exist as a sovereign State and exercise its authority over its population and on its territory. This situation would nonetheless have certain disadvantages. For example, certain States might refuse to negotiate bilateral treaties with Québec or throw up barriers to its exports, subject to GATT provisions in this respect, were Québec to become a member of GATT. However, a number of non-recognized States or States that are recognized by a limited number of States, such as

Taiwan, have succeeded in establishing unofficial relations similar to diplomatic ties with numerous other States and in ensuring their economic development. However, recognition would facilitate Québec's integration into the international community.

Traditionally, recognition is extended to a State that combines the three constituent elements of statehood mentioned above. However, recent international practice suggests new elements have been added.[29] Firstly, the new State must respect the rights of minorities on its territory. Thus, before gaining recognition by the United States and the countries of the European Community, Croatia, Slovenia and Bosnia-Hercegovina had to guarantee the rights of members of minority groups living in their territory. The new country must also agree to respect preexisting borders. Finally, recognition is extended all the more willingly when sovereignty is the result of a clear, democratic decision.

The list of conditions on recognition can be extended. For instance, European Community member States recently indicated that recognition also requires compliance with the provisions of the *United Nations Charter* and the commitments contained in the 1975 *Final Act of Helsinki* and the 1990 *Charter of Paris*, particularly with respect to the maintenance of the rule of law and respect for democratic values and basic freedoms. It also assumes the new State will honour the predecessor State's commitments pertaining to disarmament and nuclear non-proliferation, and an undertaking to settle, by agreement or through arbitration, all matters resulting from the succession of States.[30]

Even if a sovereign State satisfies all the above conditions, there is no obligation in international law on other States to recognize it. Recognition is an entirely political act and many considerations come into play when States make decisions.

For instance, Canada would not hesitate to recognize a Québec that had achieved sovereignty with its consent. However, in the event of a unilateral proclamation of independence, its decision would depend on various factors, possibly including the willingness of the new State to assume an equitable portion of the federal debt and preserve the current

---

29. See the *Declaration on the Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union* issued by the European Community and the White House press release on the recognition of former Yugoslavian republics.

30. See the *Declaration on the Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union*.

economic space, and how it treats the aboriginal peoples and minorities on its territory.

On the latter point, Andry Patry[31] expressed the opinion that the federal government's existing responsibilities towards the aboriginal peoples would prevent it from recognizing a sovereign Québec before their fate in the new State were settled to Canada's satisfaction. Edward McWhinney[32] pointed out that the question of the aboriginal peoples is not legally tied to the issue of recognition pursuant to existing international law.

In the event of sovereignty, recognition by Canada would be very important to Québec, since Ottawa's conduct would influence that of many foreign capitals. In fact, by extending recognition to Québec before Canada does, foreign States could jeopardize their good relations with Canada.

The reaction of the United States would surely be influenced by that of Canada since it is a friendly nation and an important economic partner. As an American expert, Joseph Jockel, pointed out to the Committee, though Washington would not be hostile to a newly sovereign Québec, [TRANSLATION] "neither would it be enthusiastic [since] the United States prefers a united Canada".[33]

Consequently, should Québec declare independence unilaterally, recognition could take time. However, as some experts indicated to the Committee, a new State that complies with international law sooner or later obtains the tacit or explicit recognition of other States.

4.6.2 Participation in the international community

The Committee heard the opinions of Louis Balthazar, Edward McWhinney and Joseph T. Jockel on the international relations of a sovereign Québec. It also asked Professor Daniel Turp to study Québec's succession to treaties to which Canada is party. This study and the testimony the Committee heard were useful in its analysis of this issue.

---

31. André Patry, November 7, 1991 (CEAS-201).

32. Edward McWhinney, February 12, 1992 (CEAS-876).

33. Joseph T. JOCKEL, February 12, 1992 (CEAS-882).

A) Representation abroad

Currently, Québec maintains an international presence through the ministère des Affaires internationales. This department operates a network of 27 delegations abroad and, for fiscal 1990-1991, had a budget of $101.3 million. Québec also makes use of the services of 81 embassies of the federal Department of External Affairs for purposes of foreign representation.

A sovereign Québec, succeeding to a State that is active on the international scene, should consider the role it wants to play. It should convert its delegations into diplomatic missions and extend its representation network. That kind of transformation does not occur overnight. Consent must first be obtained from the host State, which must certify the mission and accredit the representatives of the new State seeking to establish diplomatic relations with it. A State has no right to demand that another State receive its mission and representatives. Should it become sovereign, Québec would obviously have to comply with these practices.

Active participation in the international community requires substantial resources. For example, in 1990, countries whose output is similar to that of Québec, such as Finland, Sweden and Switzerland, devoted 0.92 percent, 1.12 percent and 0.48 percent, respectively, of GDP to foreign affairs, including funds earmarked for international aid. At present, Canada allocates 0.55 percent of GDP to foreign affairs.

While it is feasible for Québec to conduct diplomacy on the same scale as States of its size, it is undoubtedly more realistic to contemplate the gradual extension of the Québec network of foreign diplomatic missions. Establishing an independent diplomatic service would entail significant start-up costs.

B) Succession to international treaties

Some may think that participating in the international community is simply a matter of maintaining diplomatic relations with other States. However, a substantial part of this participation consists of treaties, agreements, and exchanges of letters between States. An examination of the rules of succession of States pertaining to treaties will help explain the obligations

that would bind Québec as a successor State to international treaties concluded by Canada.[34]

There are two opposing schools of thought in this area. The first, the so-called *clean slate* school, assumes that the successor State is bound only by the treaties to which it decides to adhere. The second, or *continuity* school, assumes that the secessionist State must honour all the obligations of the predecessor State pertaining to international treaties. The second thesis prevailed in the Vienna Convention on the Succession of States in Respect of Treaties (section 34). However, this Convention was never put into effect, and States continue to apply, in similar circumstances, the clean slate rule.

However, there is a generally acknowledged rule pertaining to territorial treaties and those instituting a territorial regime: in these areas, succession is automatic. This solution is grounded in the territorial integrity rule and the stability of borders upon accession to sovereignty. Treaties that create international borders, such as the 1908 treaty that established the Canada—United States border and the treaties on the legal framework pertaining to the Saint Lawrence Seaway, would be legally and automatically binding on a sovereign Québec. Canada and the United States would remain bound by the Seaway accords. However, they would have to allow for adaptations to common institutions needed to include Québec as a new partner.

Similarly, Québec would have to assume the obligations arising under any treaty declaratory of customary international rules or imperative rules of international law. In particular, this class of treaties includes many conventions relating to human rights, most being filed with the Secretary General of the United Nations. The latter's practice is to send the new United Nations member State a list of treaties concluded by the predecessor State and to ask the successor State to advise him of its adherence where appropriate. Even if, strictly speaking, the automatic succession rule does not apply, adherence to these treaties is unconditional. Of its own volition, Québec declared itself bound, as a federated entity, by most of the international instruments for the protection of human rights and basic freedoms. Québec's application to adhere to these conventions as a sovereign State would encourage its recognition by other States.

---

34. Daniel TURP in collaboration with Frédéric GOUIN, *Étude sur la succession du Québec aux traités auxquels le Canada est partie dans l'hypothèse d'une accession du Québec à la souveraineté*, December 1991, 217 pp.

Other types of multilateral treaties are considered personal in nature, i.e. their content depends on the identity of the States that are party to them. The rule here is to renegotiate them. Such treaties include military alliances, and arbitration or mutual assistance treaties. In all cases, the new State's adherence must be compatible with the object and purpose of the treaty.

Under the accepted rule, i.e. the clean slate, a new sovereign State must negotiate its adherence to these bilateral treaties. Québec would therefore not succeed to treaties binding Canada and other States, unless such treaties are in a category of treaty for which succession is automatic. Québec would, among other things, have to decide on the 130 bilateral treaties Canada has signed with the United States alone which could be of interest to Québec. Of these, the most prominent is undoubtedly the Free Trade Agreement.

C) Membership in international organizations

As for membership in international organizations, according to current practice, a new State chooses the organizations it wishes to join and applies for membership according to their established procedures.

The membership procedures of some major international organizations are given as examples. The United Nations Organization expects the new State to advise the Secretary General that it wishes to become a member and ratify its Charter. Such membership becomes formal through a vote of the General Assembly on the recommendation of the Security Council. The membership procedure of the International Labour Organization includes a declaration addressed to the director general in which the new State acknowledges that it is bound by the provisions of the conventions of the Organization to which the predecessor State was party. The International Monetary Fund stipulates that a State can become a member of the organization following a majority recommendation of the Board of Governors. The International Bank for Reconstruction and Development grants membership status only to States that have previously been accepted for membership by the IMF. Membership in the International Civil Aviation Organization can be obtained simply by ratifying the Chicago Convention, which created the organization. Québec currently holds participating government status in the Agence de coopération culturelle et technique, the principal organization of the international community of French-speaking nations; Québec could become a member State by signing and ratifying its convention and charter. The appropriateness of Québec's membership in other organizations such as the North Atlantic Treaty

Organization, the Organization of American States, the Commonwealth and the Universal Postal Union, would have to be evaluated.

In short, Québec would acquire international personality by virtue of its accession to sovereignty. Before this can produce its effects, Québec would have to be recognized by other States which would thereby consent to diplomatic relations with Québec. Québec could then establish embassies on their territory and conclude international agreements with them.

D) Canada's French-speaking minority

Should Québec become sovereign, persons whose language of use is French would account for only 4% of Canada's population. They would be concentrated mainly in New Brunswick and northern Ontario.

Any support Québec, like Canada, could offer these communities would promote their development. Québec would also benefit, since it stands to gain from any expansion of the area where French is spoken and where French culture flourishes in North America.

As the Fédération des communautés francophones et acadienne du Canada[35], a [TRANSLATION] "partnership already exists with Québec in many areas". Cooperation with the Desjardins movement, concerted action on literacy, agreements in the tourism sector, school supply contracts, cultural distribution and youth exchange programs are examples of this partnership. A sovereign Québec would certainly want to increase such initiatives.

The Fédération also mentions the important role of Québec's offices elsewhere in Canada, which [TRANSLATION] "have made it possible to develop a unique collaboration and closeness with the French-speaking community as a whole". These offices could be maintained and continue to play an important role in a sovereign Québec's cultural diplomacy.

---

35. FÉDÉRATION DES COMMUNAUTÉS FRANCOPHONES ET ACADIENNE DU CANADA, brief submitted to the Committee to Examine any Offer of a New Constitutional Partnership, May 11, 1992, p. 5.

5

Implications of the Implementation of Sovereignty

5.1 Legal questions

In conjunction with its deliberations on the legal aspects of the implementation of sovereignty, the Committee asked jurists Jean Gabriel Castel and Jeffrey Talpis to examine the question of legal continuity under international private law.[1] Carole Tremblay prepared, at the Committee's behest, a study entitled *Les contrats conclus par la Couronne du chef du Canada avec des personnes morales ou physiques et dont l'objet se rattache au territoire québécois*. Professors Daniel Turp and Jacques-Yvan Morin addressed certain of these questions when they testified before the Committee. The foregoing studies and testimony, and additional studies effected by the Committee Secretariat, provided background information on the questions dealt with in this section.

Generally, the purpose of law is not to create new social norms. Instead, it seeks to crystallize norms that reflect some measure of consensus and ensure that they are adopted on behalf of society as a whole. The rules of law do not precede political or social changes but are aimed at embodying such changes. Secession, a prime example of major political

1. J.G. CASTEL and J. TALPIS, *L'accession du Québec à l'indépendance et la continuité de l'ordre juridique sur son territoire : les apports du droit international privé*, February 1992.

change, is a political fact from which law draws the consequences when certain conditions are met.

The primary function of law in a society is to ensure that the rules of conduct governing citizens achieve some degree of permanence. Every day, individuals, companies and local governments make decisions on the basis of established rules. Any significant disturbance in the system of rules of conduct applicable to a given territory may have repercussions on established relations between the State and persons or between persons within the State.

Two of the main legal questions raised by Québec's accession to sovereignty relate to the procedures by which the new Québec legal order would come into force, and the continuity of the applicable legal regime.

5.1.1 Procedures governing secession

From a legal standpoint, Québec's secession and its accession to complete sovereignty would entail the substitution of State sovereignty. As various experts have noted, the change would occur instantaneously. Before it occurred, Québec would remain a Canadian province whose relations with the rest of Canada would be governed by constitutional law. Subsequently, relations between the sovereign States would be subject to international law. There is no middle ground possible between sovereignty and non-sovereignty. International law does not recognize a legal vacuum between two successive forms of sovereignty.

Thus, a new judicial order would replace the Canadian judicial order once secession was achieved, so that the legal framework reflects the new political situation. *A priori*, the shift would occur instantly, regardless of the procedure whereby secession occurred. Once Québec became a sovereign State, the question of the legality under Canadian law of the measures adopted to achieve secession would be irrelevant.

However, the continuation of the new Québec judicial order, like that of State sovereignty under international law, would depend by and large on its effectiveness within the territory. From this perspective, the process of achieving secession would be of some significance.

Two hypotheses come to mind in this regard, i.e. secession achieved with the express or implicit agreement of Canada, and secession achieved in the absence of such an agreement. The legal position of Quebecers following

the coming into force of the declaration of sovereignty would be clarified more quickly in the case of the first hypothesis.

A) First hypothesis: Secesssion occurs with Canada's consent

Should Quebecers opt for sovereignty in a referendum, the Gouvernement du Québec and other Canadian governments could negotiate and conclude an agreement whereby they undertake to adopt measures to ensure that Québec secession results in an orderly accession to sovereignty. The most frequently cited precedent for this type of accord is the secession of Singapore from Malaysia in 1965.

Such an agreement reached prior to the coming into force of the declaration of sovereignty could result, notably, in the adoption of a constitutional amendment establishing a method of secession or providing directly for Québec's secession. The agreement could also include the commitment to adopt various transitional legislative measures to settle questions pertaining to the succession of States under internal law. The parties would agree to a common date on which their respective legislation would come into force, thus ensuring the continuity of the legal order.

The preparatory legislative measures that the Parliament of Québec might adopt would not contradict the Canadian legal order as they would be allowed by a constitutional amendment. Once the declaration of sovereignty came into force, the new Québec legal order alone would obtain within Québec. From that moment on, the acts of the new Québec authorities would no longer be subject to the Canadian legal order; their validity could only be challenged in light of the new Québec legal order. Under such a process, Québec's secession could be deemed to conform with preexisting legality.

However, it is highly unlikely that a constitutional amendment would authorize Québec's secession. Were the federal and provincial governments to consent to Québec's secession, the decision would probably be political in nature. Such consent could be formal and detailed, or it could take the form of a unilateral declaration, or again, be implicit. A favourable political reaction from certain governments would not prevent measures preparatory to the accession to sovereignty from being contested before the courts. However, as the preparatory legislative measures would probably not be in force prior to the day set for Québec's accession to sovereignty, even if they were deemed to be invalid before that time, they would attain unquestioned validity once the new Québec

authorities adopted them following the accession to sovereignty. All of these legislative measures would be applied with full legal security.

B) Second hypothesis: Sovereignty is declared without Canada's consent

Were secession to occur without the agreement of the government of Canada, the latter might seek to apply the Canadian constitutional order in Québec for a time once the secession occurred. It would have at its disposal significant legal means to maintain the validity of the existing legal regime.

In an emergency, the Canadian Constitution invests in the Parliament of Canada with a general power to legislate on any question to the extent required to remedy the situation. Under the circumstances, the rules governing the division of legislative jurisdiction would be suspended and no field of jurisdiction would escape the purview of the Canadian Parliament. Moreover, through the *Emergencies Act*,[2] Parliament has already conferred on the federal government the power to intervene rapidly by order-in-council in the event of major crises, especially in situations that "seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada." The Act does not contain a notwithstanding clause relative to the *Canadian Charter of Rights and Freedoms*, although nothing would prevent the federal Parliament from seeking recourse to it to ensure the legality of emergency measures. Federal authorities would be in a position to fully occupy those fields of jurisdiction needed to maintain public order, and as a result, to formally maintain the application of a Canadian legal order along with the legal order implemented by the new Québec authorities.

As a result, for a time, uncertainty might persist among Quebecers about which body of laws prevails. In the case of disputes, the courts might be quickly asked to establish which law applies in the territory.

As was noted earlier, the members of various tribunals set up or reestablished under the new Québec Constitution might all have been appointed by the new Québec authorities and have committed themselves, when they were appointed, to exercising their duties under the new regime. Under the circumstances, it is safe to assume that the Québec

---

2. R.S.C., chapter 22, 4th supplement.

courts would apply, *a priori*, the rules of law based on the new Québec constitutional order, even if the federal courts applied the Canadian constitutional order.

The role of the courts seems capital in one respect to ensure the effectiveness of the legal regime. It must be remembered that the enforcement of judicial decisions demands the cooperation of political authorities, as the courts do not dispose of independent means to ensure enforcement of their decisions. To the extent that the political authority of the new regime was firmly established, the legal situation would present few ambiguities for the courts. Two political factors would, ultimately, take precedence over legal considerations: the determination of the Québec people to secede and the ability of Québec authorities to exercise a monopoly over public authority in Québec.

However, were uncertainty to persist following secession, four principles of public law would make it possible to settle questions concerning the legality of judicial acts.

The basic principle is that of the effectiveness of the judicial order. According to this principle, the legal order following secession obtains as soon as the new authorities exercise effective control over the territory of the State. This effectiveness usually applies to the territory overall and not to each portion of it. Thus, a Québec legal measure that was contested before the courts because it ran contrary to Canadian constitutional law could be declared valid because the Québec State exercises effective control over its territory.

The second useful principle in the event that conflict arises between two legal regimes on the territory is that of allegiance to *de facto* authorities. This means that the authorities who possess power are entitled to the allegiance of citizens to ensure sound government and protect the public. Consequently, the persons who respect statutes of this nature adopted by the Québec authorities would not be deemed to infringe upon the Canadian legal regime, even when such statutes are incompatiable with the latter.

The third principle is that of *de facto* validity. This means that the acts edicted under the appearance of the authority of a person or body without legal authority necessarily apply to third parties. As a result, the rights, obligations and other effects arising from the acts of persons carried out according to the laws adopted by Québec authorities would be deemed valid *de facto* and their validity could not be challenged. All acts attributable to the fact that the authors assumed the legality of Québec's secession would benefit from the effect of the application of this principle.

The fourth principle that may apply to secession without Canada's consent is the principle of the state of necessity. This principle has been enunciated above all in the wake of insurrections or secessions, but also in other situations that significantly disturb the legal order, such as the sudden decision to declare unilingual Manitoba legislation unconstitutional. It maintains that necessity would make it possible to justify the validity of the conduct of Québec authorities that was incompatible with Canadian law when calling such conduct into question markedly destabilizes the legal order.

In legal terms, prior agreement with Canada on preparatory and transitional measures would undoubtedly favour the orderly implementation of secession. It would also make it possible to settle in advance various questions pertaining to continuity between the old and the new legal regimes. The measures thus agreed upon should be adopted by the new Québec legislative authorities in their capacity as the sovereign authorities of the territory.

It should be noted that, even were a constitutional amendment to be adopted authorizing secession, Québec's sovereignty would neither be conferred by the Canadian Constitution nor by an agreement between Québec and Canada. Instead, it would be based on the determination of the Québec people and only normative acts derived from this determination would have effect within Québec starting on the day of its accession to sovereignty.

Canada's and Québec's longstanding democractic tradition suggests that neither the National Assembly nor the federal Parliament would seek to impose on Québec a constitutional order that runs contrary to the wishes of the Québec people.

5.1.2 The question of legal continuity

The implementation of sovereignty raises a fourfold problem of legal continuity. The first question is that of the continuity of law taken in its objective meaning of legal order; the second concerns the status of persons and their rights obligations in their relations under private law. The third pertains to the continuity of contractual relations with the State; and the fourth raises the issue of the treatment of pending legal proceedings.

A) The continuity of law in general

To avoid a legal vacuum, which would obviously be intolerable, the legislative authorities of a sovereign Québec would have to adopt legislative measures that came into force on the day that Québec acceded to sovereignty. Proceeding in this manner would make it possible to ascertain which law applied on the territory and ensure the continuity of legal situations that obtained under the old regime.

In the fields that now fall under the jurisdiction of the Québec Parliament pursuant to the Canadian Constitution, this operation might be carried out through general provisions that maintain prior law except in specific instances, until such law was modified in accordance with the new legal regime. In fields falling under federal jurisdiction until Québec acceded to sovereignty, a general provision could also be adopted stipulating that, unless they are incompatible with the new Québec Constitution, federal laws that applied previously on Québec territory would continue to be effective as though they had been adopted by the National Assembly, with the necessary modifications.

However, this solution would not solve all problems, as several of the statutes would be hard to adapt by simple interpretation, especially in private law, given that they are based on common law. Moreover, several of the statutes should be tailored to the new context. Responsibility for enforcing each statute should be assigned to a government department or an agency of the new Gouvernement du Québec. Many of the statutes should be excluded from the application of the general provision concerning continuity, notably in all sectors in which federal and provincial authority overlaps.

In order to minimize legal insecurity, it would be preferable to prepare new Québec texts, based on federal legislation and regulations, that would be adpated to the civil law tradition prevailing in Québec. Preparatory legislative deliberations should begin as quickly as possible after a referendum in favour of sovereignty and all of the statutes would come into force on the day Québec acceded to sovereignty. In addition, a general provision should make allowance for the assumption of continuity in the event doubt arises over the law applicable to a given situation in a field that was hitherto under federal jurisdiction. In certain areas and for a limited time, it would probably be necessary for the National Assembly to empower the government to modify by order-in-council the law that previously obtained in order to adapt it to unforeseen circumstances.

B) The continuity of relations under private law

Most of the rules of private law now fall under Québec's jurisdiction. By legislating to maintain such rules, the National Assembly would ensure the continuity of legal relations under private law.

However, sovereignty would give rise to two types of changes that could affect this situation. First, in those fields now under federal jurisdiction, certain changes to existing rules would be inevitable, if only to adapt them to the new legal context. As regards questions of law raised by previous legal acts or facts, it would be necessary to ascertain whether the question is governed by the former rule or the new one. In the opinion of the experts consulted, the applicable law could be established according to existing rules in the realm of transitional law.

The second type of change tied to the accession to sovereignty would not result from an amendment to the statute, but from the coming into force of an extraneous element, e.g. the now foreign nationality of a Canadian co-contractor or the attachment of property covered by the contract to what is now a foreign State. This extraneous element would be added to existing legal facts, acts or situations. The question would then be which legal order would govern the latter. The maintenance and development, following the accession to sovereignty, of trade relations with the rest of Canada would undoubtedly result in the proliferation of the number of cases likely to raise questions of this nature.

The situations in which an element of extraneity arises fall under international private law. The new Québec Civil Code contains a complete system of rules governing conflicting statutes respecting personal status, real status, the status of obligations, and the procedure and jurisdiction of Québec authorities in settling disputes and executing foreign judgments. As for the enforcement of these rules of international private law, Québec and each of the other provinces, like any other entity in a federal State, are already placed on the same footing as sovereign States. According to the experts consulted, these rules would generally make it possible to settle questions of international private law, at least in those areas now under provincial jurisdiction. Legal security would nonetheless make it necessary to adopt special measures, especially with regard to areas now under federal jurisdiction.

For example, with regard to the status of individuals, the attachment factor stipulated in the rules of the new Civil Code used to determine the law applicable is that of the province or State in which the person in

question is domiciled. In the case of a corporation, the attachment factor is usually the place where the enterprise was incorporated.

In the latter instance, a special question arises. The federal statutes pursuant to which Canadian corporations are established demand that such corporations maintain their head offices in Canada. In the event Québec acceded to sovereignty, the corporations would thus have to move their head offices to Canada in order to remain Canadian. They could, however, become Québec corporations by amending their by-laws and by maintaining their head offices in Québec. Transitional measures could facilitate the maintenance of the head offices in Québec. The experts consulted have suggested that Québec legislation be amended in order to place corporations previously established pursuant to a federal statute and maintaining their head offices in Québec on the same footing as corporations set up under Québec legislation.

Provisions in the new Québec Civil Code stipulate that real rights are governed by the law of the State in which the property is located. Property in transit is governed by the law of the State to which it is destined.

Incorporeal property, mainly debts, negotiable securities and literary, artistic or industrial property raise questions about their location. In this case, it is necessary to resort to a fictitious location. A number of assumptions under international private law make it possible to do so. However, rights to intellectual property give rise to a special problem, because a literary or artistic work, or an invention, is not naturally attached to a particular territory. It is for this reason that the question has been dealt with in an array of international conventions. The right of industrial ownership raises by and large problems pertaining to conflicts of authority, as protection of the right assumes the delivery of a patent by a public service. Thus, it is the law of the State in which the invention was covered by a patent that applies. It is now granted to Canada pursuant to federal legislation. To maintain the validity of a Canadian patent in a sovereign Québec, it would be necessary for the relevant Québec legislation to acknowledge rights acquired previously under federal legislation.

Accession to sovereignty would scarcely affect previously established contractual relations. In international private law, the intention expressed by the parties would continue to determine which legislation applied to the contract. In the absence of a stipulation in this respect, the courts would continue to apply to each contract the law of the State that displays the closest ties with it.

The experts consulted have pointed out that certain kinds of international contracts are now governed by substantial rules or rules of international private law for which provision is made in federal statutes. This is the case, for example, with respect to sea shipping contracts and bills of exchange. These legislative provisions should be closely examined and adapted to the needs of the new State. According to the experts consulted, it would be advisable to sign the 1988 *United Nations Convention on International Bills of Exchange and International Promissory Notes*, and the 1978 *United Nations Convention on the Carriage of Goods by Sea*.

C) The continuity of contractual relations with the State

As is the case in other contracts of this nature, international contracts concluded between the State and persons are governed by the law determined according to the rules of international private law. Generally, these contracts specifically mention that the law of the contracting State governs the contract.

In principle, the contracts concluded by the Crown in right of Québec should be assumed by the new State of Québec, as the province already enjoyed autonomous powers under which it concluded the contracts.

The Crown in right of Canada concludes numerous contracts whose object pertains to the territory of Québec. Some examples are contracts governing supplies and services, public works contracts, contracts respecting immovable property on the territory, and concessions contracts covering public services or natural resources on public lands.

Can persons who have concluded such a contract with the federal Crown consider that the Québec State has been substituted for the federal State and assumes the obligations pertaining thereto? The answer to this question is far from simple. The experts consulted have noted the difficulties that international law on the succession of States presents in this repsect and the importance for the new State of Québec to legislate in this area. According to current trends, it would seem that the question should be examined in light of the nationality of the co-contractor.

Were the co-contractor to acquire Québec nationality, the question would be settled solely on the basis of internal law of Québec. It would suffice to ascertain whether the Québec State assumes in whatever manner the contract concluded previously by the federal State.

When the co-contractor is a foreigner under Québec internal law, he could invoke not only Québec internal law but also international law and the theory of "acquired rights". The scope of this theory and its implementation are far from certain. Acquired rights are those rights that a person has acquired against the predecessor State under the latter's legal regime. According to the theory of acquired rights, the successor State must respect these rights until they are modified or abrogated by the latter, in exchange for compensation.

When the predecessor State transfers a right of ownership to a foreigner pursuant to the law of the successor State, the latter must respect the right of ownership, but maintains the right to expropriate the property, in exchange for compensation. A concession contract covering harvesting in a forest located on crown land would be maintained provided the new State had the right to terminate the contract in exchange for compensation.

However, different authors reject the theory of acquired rights and claim that the successor State need assume the contracts and obligations resulting from the old legal order only if it wishes to do so. When a new State adopts such a position, it inevitably leads to diplomatic pressure from those States whose nationals surmise that their acquired rights are not being respected.

In order to ensure political and legal stability, there is every reason for the new Québec State to clearly stipulate what will happen to contracts concluded with the federal State and that relate to the territory of Québec. According to the experts consulted, the adoption of the principle of the substitution of the Québec State for the rights and obligations contracted by the federal State with regard to objects attached to Québec would ensure continuity and stability in legal relations. To a lesser extent, the adoption of the principle of the continuity of these contracts, provided Québec maintained the right to amend them and terminate them in exchange for compensation, would be compatible with the objective of legal stability. Be that as it may, it would be advantageous for the federal State and the Québec State to conclude agreements.

D) Pending legal proceedings

Pursuant to the law of the succession of States, the federal courts would lose jurisdiction over the territory of Québec at the time of Québec's accession to sovereignty. What would happen to proceedings already before the federal courts, proceedings where the deadline for lodging an

appeal before a federal court of appeal has not expired, and enforceable judgments that have not been satisfied?

Under a judicial cooperation agreement between the new Québec State and Canada, proceedings pending before federal courts could simply be pursued before the federal court that first heard the case. Provision would be made in the agreement for a judgment of a federal court that was handed down before Québec acceded to sovereignty and with respect to which the deadline for lodging an appeal had not expired to be appealed despite secession. The appeal would be heard by the appropriate federal appeal court. Moreover, the judgment of a federal court that had not been enforced at the time that Québec acceded to sovereignty could be recognized and executed as though the judgment had been handed down by a Québec court.

In the absence of an agreement, and in order to ensure legal certainty on its territory, the new Québec State could unilaterally, expressly adopt certain measures. As for proceedings pending before a federal court at the time of secession, the agreement could stipulate the appropriate court, the statute, the procedure and the evidence applicable to the litigation, and procedural guarantees such as appeal modalities. Thus, the Québec Parliament could recognize the judgments handed down without further ado. In the realm of criminal proceedings, the authority of Québec courts to hear proceedings based on the criminal law in force prior to secession should be confirmed.

5.2 Government services

If Québec achieved sovereignty, the question would arise of maintaining the services now offered to Quebecers by the federal government and the integration into the Québec public service of public servants in the federal departments and agencies providing such services.

The Committee heard Jacques Lamonde and Pierre Roy, associates of the Consortium Lamonde—Mallette, who presented a study dealing with the transfer of responsibility for federal services in the event that Québec achieved sovereignty. The Committee also heard France Thibault and Denis Bradet of Grondin, Poudrier, Bernier, a law firm, whose study focused on legal questions pertaining to labour relations in the event federal public servants are transferred to Québec.

5.2.1 The current state of federal services

The *Constitution Act, 1867*, spelled out the sharing of governmental responsibilities in Canada by specifying the fields in which the federal and provincial governments may legislate exclusively and by indicating, in a number of areas of shared jurisdiction, whether the federal or provincial government has preponderance.

However, these rules did not create an impenetrable barrier between the responsibilities of each level of government. For example, the federal government intervenes in realms falling under provincial jurisdiction by means of conditional grants or through accessory measures related to intervention in fields under its jurisdiction. The federal government enjoys a general power to act in any field not expressly attributed to the provinces, such as broadcasting. The same is true of any matter which, because of its extra-provincial dimension, may not be tied to areas of jurisdiction attributed to the provinces, such as water quality in the territorial sea adjacent to a province or the development of the National Capital Region.

The *Constitution Act, 1867*, does not reflect current practice in all fields of activity in which the federal government offers services. To raise the question of the fate of federal government services in Québec, should the latter achieve sovereignty, largely exceeds that of the fields of jurisdiction that the Constitution attributed directly to the central State pursuant to section 91 of the 1867 Act.

Quebecers receive extensive services from the federal government in a wide array of fields, as the following list indicates.

- *Individuals*: Job placement and unemployment insurance services, old age pensions, family allowances, radio and television services, assistance with respect to training, research, amateur sport and artistic expression, national museums, food inspection, meteorological services, national parks, postal services, correctional services, subsidized housing and housing assistance, assistance for community agencies, especially for the elderly and the handicapped, spousal allowances for widowers and widows, reception and adaptation programs for immigrants, and so on;

- *Businesses*: Assistance for farmers and small businesses, research grants, the promotion of new technologies, industrial adaptation assistance, assistance for rail and maritime transportation, special measures governing the importing of goods, the standardization of products and so on.

Furthermore, the federal government, through transfer payments to the provinces, contributes financially to established programs in the health and postsecondary education sectors. It also contributes to social assistance and social welfare services, and to various other programs covered by an array of federal-provincial agreements. The federal government finances the equalization program that enables the provinces to offer their residents comparable public services.

Among the foregoing federal services, a number seem, *a priori*, to duplicate services that Québec now offers, e.g. similar services offered to the same users. Overlapping may also occur when both levels of government offer services to the same users. Ensuring the continuity of federal services in Québec after its accession to sovereignty would obviously entail Québec's assuming responsibility for and the financing of such services, and a thorough examination of the services repatriated in order to ascertain potential for streamlining such services.

5.2.2 *The transfer of responsibility for federal services*

The Committee commissioned a study of the main implications of transferring responsibility for federal services.[3] For the purpose of their analysis, the authors adopted the following basic premises: the continuity of services, the integration of federal public servants into the Québec public service, the evaluation of the number of federal employees needed based on a pro forma budget,[4] the minimization of negative consequences on the Hull region, and the fact that only nationals would be allowed to manage the public affairs of Québec and Canada.

The first analytical criterion adopted is the level of functional autonomy, i.e. the ability of the government of a sovereign Québec to administer the federal services now offered. An examination of the *job categories* of federal employees working in Québec and those working elsewhere in Canada does not reveal any significant differences. Moreover, the analysis shows that few senior federal public servants are located in Québec. This observation also obtains with respect to staff responsible for drawing up the strategic policy directions of agencies whose head offices are located outside Québec. The authors did not feel that this situation should pose a consequential problem with regard to functional autonomy. The regions have at their disposal the necessary operational framework and expertise in the Québec public service would cover needs.

An examination of the functional autonomy of *federal financial assistance programs for individuals* has made it possible to establish transfer procedures, the locus of decision-making and the information systems pertaining to such activities. Payments to beneficiaries, e.g. the issuing of paycheques, financial assistance for the aboriginal peoples, veterans' allowances, unemployment insurance benefits, family allowances, and old age security and federal pension payments, are made by federal government offices in Québec. However, as the data needed to prepare the paycheques of certain federal public servants and disability pension cheques are supplied by offices in Ottawa, an agreement with Canada would be required to ensure a harmonious transition for both parties.

---

3. CONSORTIUM LAMONDE—MALLETTE, *Rapport sur la gestion de la prise en charge des services fédéraux*, Québec, March 1992, 73 pp. and appendices.

4. COMMISSION ON THE POLITICAL AND CONSTITUTIONAL FUTURE OF QUÉBEC, "Analyse pro forma des finances publiques dans l'hypothèse de la souveraineté du Québec" in *Éléments d'analyse économique pertinents à la révision du statut politique et constitutionnel du Québec*, background paper No. 1, Québec, 1991.

Federal initiatives concerning security that the experts analysed are related to National Defence, Customs, the RCMP and correctional services, for which the Solicitor General is responsible. In this instance, the local and regional information concerning Québec is all located within the province, while Canadian and international information is centralized in Ottawa. The authors of the study concluded that autonomy would not pose a problem with regard to internal security, although an expert assessment should be obtained on questions of external security. Another solution might be to conclude agreements with Canada. The defence issue is quite specific; it is examined in greater detail in section 5.2.4.

Various administrative decisions and operational directives resulting from certain *strategic federal initiatives*, such as air, maritime and rail traffic, originate in Québec. For this reason, the Gouvernement du Québec could ensure the continuity of these services.

In the event that Québec assumes responsibility for federal services, it would have to make choices concerning the distribution of public servants throughout its territory. The federal services now offered in Québec are located in most of the administrative regions. A number of the services are offered from a service centre or main office in Québec City or Montréal, or are the responsibility of a general service centre in Hull. Such services would have to be integrated into the Québec public service. The authors who analysed this question propose maintaining the services offered in the regions. However, responsibility for central management and the staff in the principal offices should be located in Québec City and Montréal. The Hull region would inevitably be severely affected by such a move, as the city is responsible for the pan-Canadian management of services, a role it would lose were Québec's political status to change, although it could assume new operational functions.[5]

Such a redeployment would demand that organizational choices be made and that overlapping be scrutinized. A review of the role played by each department and agency led to the conclusion that there would be little overlapping between the federal and provincial governments. However, the study points out that transferring responsibility for federal services to Québec would make it possible to eliminate a portion of the general costs engendered by functions such as the administration and elaboration of policies and initiatives related to services such as family allowances and training. As the structures of the federal and provincial public services are markedly different, it would be necessary to thoroughly examine

---

5. See section 5.3.3, "*Border regions and the Outaouais region*".

programs and activities to establish and quantify potential savings with respect to a reduction in general costs and overlapping.

5.2.3 The transfer of federal public servants

According to Statistics Canada, the number of federal public servants working in Québec is equivalent to 103 000 person-years, including 68 000 in federal government departments and 35 000 in public enterprises. This figure includes, among other things, the employees of Crown corporations enaged in commercial activities, e.g. Petro-Canada and Via Rail, and those of subsidized enterprises such as the Canadian Broadcasting Corporation (CBC) and Canada Post Corporation.

For the purpose of comparison, the secretariat of the Conseil du trésor du Québec estimates that the number of employees working in the Québec public service is equivalent to 74 000 person-years, and the number in government agencies, 43 000 person-years. To these numbers must be added the employees of provincial government enterprises, who number roughly 36 000 according to Statistics Canada, and another 280 000 person-years in the education and health networks.

The study conducted by the Consortium Lamonde—Mallette on the transfer of the responsibilities of federal public servants focused solely on those employees likely to be affected by repatriation and with respect to whom there is sufficient information: the staff of government departments (56 000), excluding regular military personnel (12 000), and the 5 000 employees of CBC, Central Mortage and Housing Corporation, the Federal Development Bank and the Canadian Patents and Development Limited.

The authors of the study conclude that, were Québec to attain sovereignty, a major reorganization of federal employees in Québec would be called for. Nearly 21 700 positions would be affected in one way or another by the integration of federal public servants. In relation to anticipated needs, roughly 13 200 federal positions would be surplus in various places, while there would be a shortage of 8 500 positions elsewhere. On the basis of the staffing levels considered in the study, there would be a net surplus of 4 700 positions in Québec as a whole.

The following table indicates the breakdown by region of the federal staffing levels studied and the staff required in light of the study's premises.

Table 5.1

Breakdown of staffing levels

	Total	Montréal	Hull	Québec City	Other
Federal staff considered	61 237	23 613	19 277	6 441	11 906
Federal staff required	56 524	24 244	11 802	9 000	12 198
(SURPLUS) OR NEED	**(4 713)**	**631**	**(8 195)**	**2 559**	**292**

Source : Consortium Lamonde—Mallette, *Rapport sur la gestion de la prise en charge des services fédéraux*, p. 12.

The Hull region would be the hardest hit as it would have a surplus of 8 200 positions. As for the other regions, there would be a shortage of roughly 2 600 positions in Québec City, slightly more than 600 positions in Montréal, and about 300 positions elsewhere in Québec. The result would have been different if other basic hypotheses were selected. Thus, it is not the figures themselves that are important, but the number of staff displaced that would lead to problems often requiring individual solutions.

According to the authors, the surplus of 4 700 positions throughout Québec could be absorbed by natural attrition, among other things. Every year, a number of public servants leave their jobs or retire. Attrition is thus one means of reducing staffing levels without penalizing individuals. The government of a sovereign Québec could use this approach to reduce surplus federal employees. In 1990, 3 500 federal public servants working in Québec left their jobs. For this reason, the experts have concluded that, were responsibility for federal employees to be transferred, it would be possible to avoid layoffs.

Because the government of a sovereign Québec would have to integrate large numbers of federal public servants into the Québec public service, labour relations were specifically, albeit cursorily, examined.

An analysis of legal questions pertaining to labour relations[6] pinpointed the main factors to be considered with regard to the integration of federal employees. The study indicates that the federal and provincial labour relations schemes are similar in many respects, although it would not be easy to harmonize them, especially because of significant differences in job classification and remuneration systems.

In addition, the authors pointed out that, bearing in mind the nature and scope of the operation in question, the Gouvernement du Québec should legislate to ensure that these new employees are absorbed into the public service without resorting to the competitions stipulated in the *Public Service Act*.

The federal and Québec retirement funds are quite similar, although the federal government does not capitalize its contributions, i.e. contrary to the situation prevailing in Québec, there are no special funds into which employees each year pay the amounts set aside for their retirement. The transfer of such a large number of employees would require a special umbrella agreement, which would unquestionably affect the eventual sharing of the federal debt, as we will see later.

The government of a sovereign Québec would have to make commitments with respect to federal public servants and establish their working conditions. Because of these commitments, the repatriation of federal public servants could have an impact on the Québec public service. [TRANSLATION] "The massive influx of new employees could affect Québec public servants who do not enjoy job security at the time of the transfer. Similarly, the number of temporary employees would decline if there was a surplus of staff following the integration of the public servants."[7] The federal employees concerned would probably be asked to voluntarily accept new duties or change regions. According to the experts, their integration should be facilitated by additional training, temporary housing policies and other similar measures.

Bearing in mind the scope and the unique nature of such a redeployment of staff, it would be in the interests of the Gouvernement du Québec to examine the administrative decentralization and delocalization that the

---

6. SOCIÉTÉ D'AVOCATS GRONDIN, POUDRIER, BERNIER, "Examen des questions juridiques aux relations de travail dans l'hypothèse où les employés fédéraux seraient intégrés dans la fonction publique québécoise lors de l'accession du Québec à la souveraineté", Appendix VI of CONSORTIUM LAMONDE—MALLETTE, *op. cit.*, 155 pp.

7. *Ibid.*, p. 140.

French and German governments are now effecting. These examples could serve as a model for a reorganization of this magnitude.

According to the study, this undertaking could be spread over several years and the authors suggest initiating the operation before the change in political status occurs, to allow the Gouvernement du Québec to normalize the situation as quickly as possible. It has also been suggested that the government mandate a central team to manage the change and that each Gouvernement du Québec department and agency collaborate in examining federal functions and their harmonization with Gouvernement du Québec operations.

5.2.4 Defence

The Committee devoted special attention to the defence sector, given its strategic importance and the specific nature of the integration of military personnel and attendant spending. It heard Professors Albert Legault and Charles-Philippe David, and journalist Jocelyn Coulon on defence-related issues. Professor Joseph T. Jockel also broached these questions during his appearance before the Committee.

Were Québec to achieve sovereignty, it would be necessary to adopt a defence policy that would enable the new State to ensure its security and effective control over its territory.

At present, the Canadian army, in addition to ensuring the country's security, participates in United Nations peace-keeping missions and assists civilian officials at the latters' request.

In 1991-1992, Canadian defence spending reached $12.8 billion,[8] or 8.6 percent of the overall federal budget. Canada allocates the equivalent of 2 percent of gross domestic product (GDP) to defence, ranking it second to last (excluding Iceland, which does not maintain an army) among NATO members. For purposes of comparison, France and the United States devote 3.7 percent and 5.9 percent of GDP, respectively, to defence.[9]

---

8. Jane BOULDEN and David COX, *The Guide to Canadian Policies on Arms Control, Disarmement, Defence and Conflict Resolution*. Ottawa: Canadian Institute for International Peace and Security, 1991, p. 118.

9. GOVERNMENT OF CANADA, DEPARTMENT OF NATIONAL DEFENCE, *Defence 1990*. Ottawa: Supply and Services Canada, 1991, pp. 9-10.

The Canadian military system encompasses 87 500 military personnel and 60 000 reservists, to which must be added 38 000 civilian employees in the Department of National Defence, which coordinates policy and military initiatives aimed at protecting Canadian territory. The 87 500 military personnel are grouped into the navy (14 100), the army (36 600) and the air force (36 800).[10]

Some 12 000 regular military personnel and 6 000 civilians work in Québec, and the province provides 23 000 cadets and reservists.[11] In addition, approximately 4 000 Québec military personnel and civilians are stationed in Germany.

The Canadian Armed Forces maintain numerous military bases and facilities in Québec. These include the headquarters of the Mobile Force (army) in Saint-Hubert and one of the main army bases, located in Valcartier, home of the 5th Group-Brigade of Canada. The air force maintains an extensive base in Bagotville, where 26 CF-18s are stationed; the navy only maintains training ships in Québec. Moreover, a training and recruiting school and a military college are located in Saint-Jean, a repair centre and storage depot in Longue-Pointe and numerous small buildings used by cadets and the militia throughout the province.

The specialists who appeared before the Committee confirmed that military staffing levels in Québec would be sufficient to ensure ground defences. The defence of the maritime territory would be of secondary importance.

As for the air force, Québec's capabilities would largely exceed its needs. However, without control, command and communications infrastructures, the Québec air force would be blind unless it cooperated with a Canadian or American control centre.

It would be advisable for a sovereign Québec to negotiate with Canada a special agreement covering the transfer of military personnel, to ensure that the troops are clearly aware to whom they owe allegiance at all times and under all circumstances.

The question of alliances also warrants attention. For political and economic reasons, Canada has adhered to the North Atlantic Treaty

---

10. Jocelyn COULON, *En première ligne*. Montréal: Le Jour éditeur, 1991, pp. 22, 23 and 28.

11. *Ibid.*, p. 264.

Organization (NATO) since its inception in 1949 and subsequently agreed to the establishment of the North American Air Defence Command (NORAD) in 1957.

Québec's accession to sovereignty would raise the question of its adherence to these alliances. The advisability of a sovereign Québec's adhering to the two alliances is tied to economic, political and strategic assessments and negotiations that would enable it to act as a full-fledged member.

Under the rules of international law pertaining to succession to treaties, Québec would be bound to negotiate its participation in such alliances if it wished to ensure its security by acceding to specific agreements. However, the experts appearing before the Committee differed on the advisability and possibility of Québec's adhering to the alliances.

A number of experts feel that it would be to Québec's advantage to pursue Canada's current defence policy.[12] In particular, such an approach would make it possible to reduce defence costs and take advantage of a broad range of exchanges, especially concerning military equipment manufacturing contracts and research and development. During his testimony before the Committee, Charles-Philippe David noted that [TRANSLATION] "a defence policy cannot be dealt with outside the framework of foreign policy."[13]

The invited specialists agreed on one point: a sovereign Québec must not pose a security risk for the United States. They also agree on the marginal strategic importance of Québec's territory in terms of the defence of the North American continent. However, they differ on the advisability of formulating a defence policy that is radically different from existing Canadian policy.

Charles-Philippe David, who appeared before the Committee, believes that changes in the international situation in recent years allow Québec to contemplate different defence scenarios should it become a sovereign State. He asked Committee members to consider four options:

- The shared *status quo*, which consists of [TRANSLATION] "prolonging existing agreements with Canada and the United States and

---

12. Among the experts the Commission heard, Jocelyn COULON and Albert LEGAULT expressed this opinion.

13. Charles-Philippe DAVID, February 12, 1992 (CEAS-893).

various allies, with the latters' consent, while maintaining existing military resources in order to preserve some form of *status quo* in terms of security."[14]

- Independence accompanied by alliances that would entail [TRANSLATION] "obtaining the armaments needed to ensure national defence while participating in a number of alliances deemed vital for reasons of security."

- Unarmed neutrality, which could be conceived [TRANSLATION] "in such a way as to by and large withdraw Québec territory from any active military participation or alliances [...]. Military agreements could even persist in cases of acute emergency and in the unlikely event that Québec sustained an air attack, giving the United States a "right of intervention" through such an arrangement."

- A military undertaking centred on peace-keeping, based on the UN model, which falls between independence with an alliance and unarmed neutrality.

At this stage in its deliberations, the Committee did not deem it opportune to initiate the studies needed to ascertain the cost of the foregoing options.

On the basis of the opinions expressed, the Committee feels that it would be extremely costly for a sovereign Québec to singlehandedly initiate a technologically advanced defence policy, as the size of its territory and its economy do not lend themselves to such an initiative. Québec should obviously adopt an approach that reflects Canada's and its traditional allies' security concerns. To this end, were it to achieve sovereignty, Québec could propose to the Canadian and American governments and other NATO members compliance with Canada's current military commitments during a transitional period whose length remains to be determined.

---

14. On the subject of a partnership between a sovereign Québec and Canada, one that he advocates, Albert LEGAULT opines that such a partnership would demand arduous, lengthy negotiations.

5.3 *Economic questions*

5.3.1 *The Québec economy and the international context*

Before we examine the economic implications of Québec's possible accession to sovereignty, it would be useful to review the principal characteristics of the Québec economy, various concepts of economic association and dominant international trends.

A) Characteristics of the Québec economy

a) Population and indicators of collective wealth

The percentage of Canadians resident in Québec has declined constantly over the past 50 years,[15] decreasing from 29.0 percent in 1941 to 28.2 percent in 1970 and 25.4 percent in 1990. According to the most recent Statistics Canada forecasts, this figure should drop to less than 25 percent beyond the year 2000. In absolute terms, Québec's population has risen from just over 6 million inhabitants in 1970 to nearly 6.8 million in 1990. In 1990, Canada's population totalled just over 19.8 million, excluding Québec.

Statistics pertaining to gross domestic product (GDP) illustrate the size of Québec's economy. In 1990, the province's GDP reached $154 billion, compared with $672 billion for Canada as a whole. For purposes of comparison, Québec's GDP is similar to that of Denmark and of Finland. It should be noted that between 1970 and 1990, Québec's share of Canada's GDP slipped from 25.4 percent to 22.9 percent.

In 1990, Québec's per capita GDP was $22 761, which was 90.2 percent of the Canadian average. The disparity between Québec's per capita GDP and that of Canada persisted between 1970 and 1990, hovering around 90 percent. However, it is to be noted that between 1970 and 1980, Québec's position in relation to Canada's deteriorated slightly, falling from 90.1 percent to 87.8 percent. It subsequently rose between 1980 and 1990. Per capita personal income in Québec increased from 89.6 percent of the Canadian average in 1970 to 92.7 percent in 1990.

---

15. Data presented in this section are drawn from Statistics Canada publications unless noted otherwise.

Moreover, in 1990 the Québec unemployment rate was 10.1 percent even before the adverse economic situation in 1991 made itself felt. The Canadian rate was 8.1 percent and, excluding Québec, 7.4 percent.

An analysis of the discrepancies between various unemployment rates reveals that Québec's position, which was already unfavourable in 1970, has worsened over the past 20 years. While Québec's unemployment rate was 1.3 percent higher than the Canadian rate in 1970, this disparity subsequently widened to 2.3 percent in 1980, then fell to 2.0 percent in 1990. The discrepancy between Québec and Canada, excluding Québec, is even more marked, as it reached 2.7 percent in 1990.

There are different methods of establishing international comparisons of the well-being of a country's inhabitants. According to the first indicator, based on real per capita GDP expressed in U.S. dollars, Canada ranks tenth among the industrialized nations. However, based on the OECD's standard of living index,[16] estimate according to per capita gross domestic output and converted on a common scale using purchasing power parities, Canada now ranks second only to the United States (its standard of living is equivalent to 93 percent of the American standard).

A similar indicator, calculated for the same year and based on per capita income in Québec compared with the Canadian average, provides an international basis of comparison with respect to Québec. According to this indicator, Québec appears to rank fourth in the world, after the United States, Canada excluding Québec, and Switzerland; the province's standard of living is equivalent to 86 percent of the American standard.

b) Structure of the Québec economy

An analysis of the structure of the Québec economy illustrates the relative importance of different sectors of activity. In 1988, only 2 percent of Québec's GDP was attributable to agriculture, by and large the same proportion prevailing in G7 nations.[17]

Some 32 percent of Québec's GDP was generated by industrial activity, including the mining, manufacturing, construction and energy sectors, i.e.

---

16. ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *Principaux indicateurs économiques*, Paris, August 1991, pp. 174-180.

17. GOUVERNEMENT DU QUÉBEC, MINISTÈRE DES FINANCES, *Comparaisons internationales et statistiques sur les dix provinces canadiennes*, December 1990, p. 27.

virtually the same rate noted in the United States. Prior to reunification, West Germany was the most heavily industrialized country: 51 percent of its GDP was tied to industrial activity, compared with 40 percent in Canada.

Québec's low level of industrialization means that the tertiary sector has been pushed to the fore. The share of Québec GDP attributable to the service sector totals 66 percent, compared with 65 percent in the United States. Among the G7 countries, West Germany's tertiary sector is the smallest, accounting for 47 percent of GDP. In Canada, services generate 56 percent of gross domestic output, similar to figures for Japan, the United Kingdom and Italy.

c) Exports

One of the most striking features of the Québec economy is its degree of openness to the outside world. In 1974, the ratio of total Québec exports to GDP, including interprovincial trade, reached 47.9 percent, compared with 54.5 percent in 1984.[18]

The same degree of dependency on other provincial and external markets can be observed with respect to Ontario. The ratio of total Ontario exports to GDP increased from 49.6 percent in 1974 to 62.9 percent in 1984.

At the international level, such a degree of openness to the outside world is hardly remarkable, as the ratios in countries of transit such as Belgium and the Netherlands are 77 percent and 63 percent, respectively.[19] The ratios in countries similar in size to Québec, such as Austria, Sweden or Norway, are 37 percent in the case of the first two countries, and 48 percent with regard to the latter. However, it should be noted that Québec's degree of openness is almost double that of the G7 nations. In 1984, Canada exported the equivalent of 28.3 percent of its GDP abroad.

---

18. Pierre-Paul PROULX and Guilain CAUCHY, "Un examen des échanges commerciaux du Québec avec les autres provinces canadiennes, les États-Unis et le reste du monde" in *Éléments d'analyse économique pertinents à la révision du statut politique et constitutionnel du Québec*, Commission on the Political and Constitutional Future of Québec, background paper No. 1, Québec, 1991, Table IV.2, p. 140.

19. GOUVERNEMENT DU QUÉBEC, MINISTÈRE DES FINANCES, *op. cit.*, p. 26.

In 1984, Québec exported $51.2 billion, or one-third of its output, in intermediate and finished goods and services. Bearing in mind the growth rate of GDP between 1984 and 1990, it is estimated that the province's total exports in 1990 reached between $70 billion and $80 billion.

According to 1984 data, 60 percent of such exports were shipped to the other provinces, and the remainder to the rest of the world. Among the Canadian provinces, Ontario alone accounted for 58.2 percent of Québec exports to the rest of Canada, or 11.6 percent of total Québec output. The principal products exported to Ontario are paper and allied products and primary metal products. The main services exported are financial, insurance and real estate services, and shipping and storage services.

In 1990, Québec goods shipments abroad totalled $26.1 billion. In geographic terms, the exports were hardly diversified. In 1990, Québec international goods exports to the American market accounted for 76.2 percent of total exports, equivalent to $19.9 billion. Europe received 14.0 percent of Québec international exports, worth $3.6 billion,[20] ranking it second among the province's international customers.

d) Imports

The openness of Québec's economy is also reflected in imports. In 1984, 35.2 percent of total demand for intermediate and finished goods and services was attributable to imports, worth $55.6 billion, 57.4 percent of which came from the other provinces and the remaining 42.6 percent from the rest of the world. In 1984, imports from Ontario totalled $21.2 billion. The main products imported from Ontario are chemical products, fruit, vegetables and food. The main services imported are financial, insurance and real estate services, shipping and storage services and wholesale trade services.

Geographically, the breakdown of Québec's international imports of goods is markedly different from that pertaining to exports. In 1990, Québec imported goods from other countries worth $27.7 billion. The United States, the province's main trading partner, accounted for nearly 48 percent of the total, equivalent to $13.2 billion. Québec's imports from Europe totalled $7.9 billion, or 28.6 percent of the province's overall

---

20. Data on Québec's international trade are drawn from: GOUVERNEMENT DU QUÉBEC, MINISTÈRE DES AFFAIRES INTERNATIONALES, ***Québec and Interdependence, Global Horizons***, 1991, 225 pp., revised figures.

imports. Asia and Oceania accounted for 16.8 percent of the total, or $4.7 billion.

e) Other interregional links between Québec and Canada

The openness of the provincial economies is reflected in the fact that firms established in one province often do business in other regions of Canada. According to Economic Council of Canada estimates for 1987,[21] Québec ranked first in terms of the level of local control it exercises over its economy. Nearly 69 percent of income earned within Québec was earned by corporations under Québec control. The same calculation concerning the other provinces reveals that the rate ranged from 46 percent in Manitoba to 63 percent in Prince Edward Island. In Ontario, 59 percent of income was earned by companies under local control.

According to the same estimates, Québec firms collected between 3 percent and 7 percent of total income earned in other provinces, including 6.3 percent in Ontario. To the contrary, Ontario corporations earned 8.0 percent of total income within Québec. However, Ontario firms obtained a larger share of income in each of the other provinces, i.e. between 9 percent and 16 percent.

Individual mobility is another striking feature of the Québec and Canadian economies. The Canadian common market allows individuals in one province to live or work anywhere in Canada or travel between provinces with very few constraints. In demographic terms, this has led, among other things, to high rates of interprovincial migration, especially among English-speakers. While the average of mobility indices for the other provinces reached 5.8 percent beween 1981 and 1986, this index was only 2.1 percent in Québec.[22] However, only 0.6 percent of French-speaking Quebecers had moved to another province, compared with 10 percent of English-speaking Quebecers. The calculation of the

---

21. ECONOMIC COUNCIL OF CANADA, *28th Annual Report*, Ottawa, 1991, p. 41.

22. The data in this section are drawn primarily from Marc TERMOTE, "L'évolution démolinguistique du Québec et du Canada" in *Éléments d'analyse institutionnnelle, juridique et démolinguistique pertinents à la révision du statut politique et constitutionnel du Québec*, background paper No. 2, Commission on the Political and Constitutional Future of Québec, January 1991, 90 pp.; and Marc TERMOTE, "Ce que pourrait être une politique de migration" in Jacques HENRIPIN and Yves MARTIN, *La population du Québec d'hier à demain*. Montréal: Presses de l'Université de Montréal, 1991, 213 pp.

average between 1961 and 1986 reveals a net loss of 16 000 inhabitants per year to interprovincial migration.

Table 5.2

Interprovincial migration, 1966-1986*

	From Québec to the rest of Canada	From Canada to the rest of Québec	Balance
1966-1971	160 400	84 900	75 500
1971-1976	145 800	83 800	62 000
1976-1981	203 000	61 300	141 700
1981-1986	130 200	67 000	63 200

*Source: Marc Termote, *L'Évolution démolinguistique du Québec et du Canada*, p. 308.

An analysis of the emigration of English- and French-speaking Quebecers by level of education reveals that the most educated individuals are often the most mobile. In the two language groups, university graduates were the most numerous to emigrate to other provinces. Between 1981 and 1986, 32 percent of French-speakers and 41 percent of English-speakers who settled in another province had a university degree.

In 1990, the federal government spent $32.6 billion in Québec, including interest payments on the debt and transfers to other levels of government. On the other hand, Ottawa collected $26.2 billion in taxes in Québec. The federal government deficit in Québec, based on the national accounts, totalled $6.5 billion, compared with a total deficit of $25.5 billion for Canada as a whole. [23]

B) Different levels of economic association

Before we turn to the question of choosing new types of economic arrangements with Québec's principal partners, it would be useful to

23. STATISTICS CANADA, *Provincial Economic Accounts*, Cat. 13-213, March 1992, 141 pp.

review the main concepts concerning different possible levels of economic integration or association.[24]

The *free trade zone*, which is the first level of association, consists essentially of an economic space in which customs duties and quotas on trade in goods and services between member countries are abolished. Border checkpoints between the partners are maintained in order to verify the origin or goods and control the movements of individuals. Each country maintains its own trade policy toward other countries. The agreement usually makes provision for procedures for settling disputes.

A *customs union*, under which a common tariff policy is implemented with regard to other countries, makes it possible to maintain free trade in goods and services between the parties, without controlling the origin of such goods and services. An appropriate decision-making process must be adopted by the parties to enable them to devise a common trade policy. [TRANSLATION] "At best, the customs union agreement may include the creation of a number of compensatory measures in the form of interregional transfers in favour of disadvantaged regions."[25]

The *common market* is an extension of the customs union. It is enhanced by the mobility of productive resources, namely manpower and capital. [TRANSLATION] "Precisely because it achieves a greater degree of integration, it must be structured and provision must be made for an effective procedure for settling disputes, including a community authority disposing of real power."[26]

An *economic union* is an even more advanced form of economic integration through which the parties agree to more closely harmonize or pool various economic or social policies. When the members of the association use a common currency, economic and monetary union is achieved.

The ultimate form, a *political union*, is a scheme whereby the parties are completely integrated under a single political authority that may exercise complete control over economic policy.

---

24. See Claude MASSON's *Exposé économique*, submitted to the Committee to Examine Matters Relating to the Accession of Québec to Sovereignty, September 1991, 20 pp.; and ECONOMIC COUNCIL OF CANADA, *op. cit.*, 143 pp.

25. Claude MASSON, *op. cit.*, p. 10.

26. *Ibid.*, p. 7.

Members derive various advantages from economic integration, of which larger markets is unquestionably the most important. Access to larger markets enables companies to specialize and benefit from economies of scale while offering consumers a greater variety of products at lower prices. The mobility of manpower and capital also helps distribute resources more efficiently.

Different experts pointed out that the grouping of countries may benefit members by bolstering their negotiating power within international forums such as the General Agreement on Tariffs and Trade (GATT), G7 and so on. Obviously, such groups are predicated on the assumption that members make reciprocal concessions.

Depending on the willingness of the association's members to do so, the parties may opt to share the cost of the common services they offer their residents. Such a move may also make it possible to pool and share economic risks. On the regional level, risk-sharing may take the form of transfers from the wealthiest regions to the least privileged ones.[27]

C) The globalization of trade

At the international level, the more pronounced economic interdependence of States has been observed for several decades. Under the impetus of freer trade, technological innovation and the globalization of business, economic activity has become increasingly integrated.[28]

Freer trade appears to be a direct consequence of the implementation by the States of the liberal theory of international trade;[29] it encourages the more efficient allocation of resources, which in turn increases the well-being of all participants. Initiatives undertaken by GATT or the International Monetary Fund (IMF) attest to the international community's determination to foster world trade.

Since the late 1970s, financial integration has accelerated on a global scale, notably as a result of technological breakthroughs in the fields of

---

27. ECONOMIC COUNCIL OF CANADA, *op. cit.*, pp. 31-33.

28. ECONOMIC COUNCIL OF CANADA, *Pulling Together: Productivity, Innovation and Trade*, Ottawa, 1992, pp. 1-3.

29. Ivan BERNIER, *La dimension juridique des relations commerciales d'un Québec souverain*, brief submitted to the Committee to Examine Matters Relating to the Accession of Québec to Sovereignty, 1992, p. 18.

communications and data processing. Domestic deregulation and the openness of financial markets to foreign capital, both essential to such integration, have also facilitated more extensive recourse to foreign capital.

Parallel to the broadening of the scope of GATT and multilateral agreements reached on the periphery of this general agreement, more and more countries are agreeing to establish common markets, customs unions and free trade zones.

The Canada-United States Free Trade Agreement (FTA) has been in force since 1989. Negotations are now under way with a view to concluding a tripartite agreement that includes Mexico. Brazil, Argentina, Uruguay and Paraguay set up a customs union in 1991. Other economic associations have been established in the Caribbean, Central America and between Australia and New Zealand. Trade between the nations of Southeast Asia is also extensive.

The European Community (EC), instigated in 1957, is the biggest and best known of these economic blocks. Moreover, the European Free Trade Association (EFTA), which encompasses most of the other western European nations not in the EC, recently reached an agreement with the EC to ensure the free movement of goods, services, manpower and capital between its members and the 12 EC member States.

The EC is also a noteworthy example of economic integration in that it is planning to advance from the stage of a common market to that of an economic and monetary union by the end of the century. The shift from a common market to an economic union will require the adoption of various measures to harmonize policies, especially in the social and financial fields. In addition, if the Maastricht agreement is ratified by member countries, it will lead to the democratization of the community system, without transforming the EC into a genuine federation.[30]

Decisions reached by GATT or other economic associations such as the FTA significantly alter the rules of international trade and thus curtail the scope of various domestic economic policies, such as legislation governing competition or trade policy. Moreover, while such international treaties previously focused primarily on trade in goods, today they encompass a wide range of fields, such as services, capital, intellectual property and so on.

---

30. Émile NOËL, presentation to the Committee to Examine Matters Relating to the Accession of Québec to Sovereignty, January 28, 1992 (CEAS-587).

The emergence of supranational institutions creates new constraints on national governments. According to some observers, the new factors that determine the competitiveness of the nations grouped in these integrated economic spaces are centred increasingly at the local and regional levels. This trend demands some degree of decentralization of domestic policy that directly affects such factors.[31]

Various features of the Québec economy and observations concerning the globalization of trade lead us to a number of considerations that shed light on the choice of the type of economic arrangements to be sought should Québec achieve sovereignty. In the opinion of all of the experts the Committee heard, maintaining the essential traits of the existing economic space and Québec's adherence to the main international agreements appear to be the ideal solution to preserving what has been achieved and ensuring the economic security of Quebecers. The sections that follow focus on all of the resulting implications with respect to economic and trade relations, currency and the financial sector.

5.3.2 Economic and commercial relations

Québec's possible accession to sovereignty raises questions about the means of maintaining the new State's economic and commercial relations with the world in general, and Canada and the United States in particular. From the standpoint of a new economic arrangement with Canada, it would be relevant to consider what is at stake in those economic sectors that benefit at present from special protection measures.

In the course of its deliberations, the Committee heard testimony from Professors Ivan Bernier, Bernard Landry, Pierre-Paul Proulx, Gordon Ritchie (Strategico), Roma Dauphin and Stanislas Slosar on various facets of the economic and commercial relations of a sovereign Québec. It also heard Robert Saint-Louis, Robert A. Jenness (Informetrica), André Côté (Stradeco) and Dennis DesRosiers (DesRosiers Automotive Consultants), who dealt with the same topics. Gérard Coulombe and Joseph T. Jockel also broached these questions when they appeared before the Committee. Moreover, the Committee has commissioned the following studies: *La*

---

31. See Pierre-Paul PROULX, ***L'effet de la souveraineté sur les relations commerciales d'un Québec souverain en particulier dans l'espace économique Québec--Canada--États-Unis--Mexique : que conclure dans le contexte d'intégration économique et de politiques publiques en évolution?***, brief submitted to the Committee to Examine Matters Relating to the Accession of Québec to Sovereignty, 1992, 13-page summary and appendices.

dimension juridique des relations commerciales d'un Québec souverain (Ivan Bernier); *L'impact de l'accession du Québec à la souveraineté sur les conditions de développement du secteur agro-alimentaire* (Robert Saint-Louis); *Étude de l'impact de l'accession du Québec à la souveraineté sur l'industrie du textile et celle du vêtement* (Stradeco); *Avis sur l'interprétation de l'article XI du GATT* (Armand L.C. de Mestral); *The Impact of Québec's Accession to Sovereignty on the Automotive Industry in Québec* (DesRosiers Automotive Consultants); *Étude de modalités de maintien de l'espace économique canadien actuel après l'accession du Québec à la souveraineté* (Roma Dauphin and Stanislas Slosar).

The Committee also closely examined the experience of the European Community and, to this end, heard testimony from the following expert witnesses: Émile Noël, who dealt with the question of changes in the EC with regard to the sharing of powers by member States and community institutions; Hjalte Rasmussen, who spoke about the process of European integration; Professor Christian G. Louit, who told the Committee about attempts at harmonizing fiscal policy within the EC; and Professor Edmond Orban, who examined various facets of centralization and decentralization in the EC.

A) Multilateral relations

International goods trade is governed by the General Agreement on Tariffs and Trade (GATT), of which Canada was one of the original signatories in 1947. Over 100 countries accounting for over 80 percent of world goods trade have also signed the treaty.

GATT is a multilateral treaty that seeks to foster freer trade. It establishes the rights and obligations of the signatories (contracting parties), specifies the rules governing international trade, and establishes a procedure for settling disputes. It is also a forum where the contracting parties negotiate the gradual elimination of barriers to trade. Such negotiations are conducted at multilateral conferences, dubbed negotiating rounds.

The Uruguay Round, now under way, began in 1986 and centres mainly on improved access to markets, including a reduction in tariff barriers of between 33 percent and 40 percent, and the abolition of protection accorded the textile-clothing and agriculture sectors; the integration of services into the General Agreement; the protection of intellectual property rights; and control over domestic measures pertaining to investment.

Observers agree that the Uruguay Round is ambitious indeed. Agriculture in particular is a problem and it is for this reason that the director general of GATT proposed in December 1991 a compromise set out in the Dunkel report.

To maintain its access to external markets and because its principal trading partners operate under the framework of GATT, a sovereign Québec should adhere to the agreement. Access to external markets is an essential condition for Québec's prosperity and growth, as its domestic market is confined and its economy, very open.

Adhering to GATT would enable a sovereign Québec to benefit from the advantages arising, among other things, from the application of the most favoured nation clause, which stipulates that the trade advantages accorded to a signatory must be extended to all parties to the agreement. In this way, Québec could ensure that it benefits from tariffs pertaining to the most favoured nation when trading with countries that have signed the agreement.

Moreover, adhering to GATT would make Québec privy to certain agreements resulting from the Tokyo Round and that Canada and the United States, among others, have ratified. Several of the agreements are explicitly named in the Canada-United States Free Trade Agreement. This is true, for example, of non-tariff agreements or codes pertaining to government procurement and technical standards.

The Agreement on Government Procurement is designed to encourage international competition with respect to purchases of public entities controlled by the signatory States. Under GATT, the threshold beyond which public markets must be opened is roughly $215 000.[32] However, provisions in this agreement only apply to a selection of agencies determined by the signatory State and exclude the purchases of provincial governments. A sovereign Québec adhering to the GATT Agreement on Government Procurement would have to specify the government departments or agencies under its jurisdiction whose purchases would be subject to international competition. The bulk of purchases related to public transportation, telecommunications and energy have been excluded from the application of the Agreement. The federal government has excluded the purchases of Transport Canada, Communications Canada, Fisheries and Oceans Canada and all Crown corporations.

---

32. Pursuant to the FTA, this threshold has been set at US$25 000.

Another agreement negotiated under the auspices of GATT would be of particular interest to a sovereign Québec, namely the Multifibre Agreement (MFA) which, contrary to the general philosophy of GATT, authorizes the contracting parties to set quotas on imported textiles and clothing. The agreement came into force in 1974 and allows the industrialized nations to protect themselves from cheap imports from the developing countries. Canada has negotiated 28 self-limitation agreements with exporting nations. If the MFA is not eliminated under the Uruguay Round, a sovereign Québec should make sure that these or similar agreements protect the Québec industry.

There are two ways of joining GATT. A new State may negotiate with the contracting parties the means by which it accedes to the agreement and the course of succession that enables a new State, under certain conditions,[33] to succeed to the obligations of the predecessor State. The practice of States has made the latter method of proceeding, which is more flexible and expeditious, the normal means of entry for newly independent States. This procedure has another advantage in that it accords a new State a period of reflection, usually two to three years, during which the Agreement applies *de facto*. By acceding to GATT by means of succession, Québec will have to accept unreservedly the conditions and exigencies applicable to the predecessor State, i.e. adopt the Canadian tariff schedule.

Even if Québec failed to reach an agreement with Canada on an economic association including a common external trade policy, it could nonetheless deem it appropriate to follow the succession procedure. Under the circumstances, it would benefit from the usual period of reflection to ascertain what is the most advantageous, namely whether to succeed to Canada's obligations or engage in multilateral negotiations with a view to adhering to the General Agreement. This second option would be warranted were Canada's commitments to GATT incompatible with the new State's trade policy.

---

33. There are two conditions for acceding to GATT by way of succession: the new State must be an offshoot of a territory with regard to which the predecessor State accepted the application of the Agreement and it must have an independent customs territory over which it maintains complete autonomy in the conduct of its external trade relations.

According to the experts, a sovereign Québec should also join the principal international economic agencies such the IMF, the OECD and the World Bank.[34]

The International Monetary Fund (IMF) is responsible for overseeing the smooth operation and maintenance of the international monetary system. Among its objectives, the IMF seeks to facilitate the expansion and harmonious growth of international trade.[35]

The Organization for Economic Cooperation and Development (OECD) is an international forum for the industrialized nations. Its initiatives focus on coordinating the economic policies of member countries, assisting the developing nations, and freer trade, current payments and the movement of capital. Joining such an organization could enhance Québec's credibility at the international level. A unanimous decision is required to accept new members.

The World Bank, which grew out of the Bretton Woods Agreement of 1944, operates by and large in the developing nations, where it makes loans or provides guarantees for development or reconstruction projects. Membership in the IMF is a condition for joining the World Bank. In order to support the efforts of its exporters, it would be in the interests of a sovereign Québec to join this agency.

The experts consulted appeared to take it for granted that once a sovereign Québec achieved recognition in the international community, it would have no difficulty in joining the organizations mentioned earlier. Indeed, they did not allude to the consequences for Québec of even temporary exclusion from such agencies.

With a view to exercising its jurisdiction in international trade, Québec should also round out its legislation and, if need be, harmonize it with a number of existing Canadian statutes governing customs, export and import permits, special import measures, excise and so on.

---

34. Ivan BERNIER, *op. cit.*; SOCIÉTÉ D'AVOCATS DESJARDINS DUCHARME, *La souveraineté du Québec et les institutions financières, le cadre juridique du fonctionnement des institutions financières et de certains autres intervenants sur les marchés des capitaux : la situation actuelle et les ajustements requis advenant l'accession du Québec à la souveraineté*, Montréal, March 1992, 206 pp. and appendices.

35. See section 5.3.4, "The currency of a sovereign Québec", on methods of acceding to the IMF.

B) Relations with Canada

a) The current situation

Canada is a common market insofar as goods, services, persons and capital circulate freely from one province or territory to another and it is an economic union to the extent that several policies are shared or harmonized.

The Canadian common market is noteworthy for its interprovincial trade links which, although extensive, are being gradually overshadowed by international markets. Such ties are especially close between Québec and Ontario. The Atlantic provinces engage in limited trade with each other and their trade ties rarely extend beyond Ontario. Similarly, the Western provinces depend very little on each other from an economic standpoint.

The most recent report of the Economic Council of Canada deemed the Canadian economic union to be problematical: "[...] the key challenge for Canada in the coming years is to commit more energy to finding new mechanisms to coordinate policies among the provinces, and betweeen them and the federal government--to give more coherence to the way in which they manage the Canadian economy."[36] The Council felt that incoherence in such policies was a greater detriment to the standard of living of Canadians than obstacles to internal trade. To preserve the economic union, the Council even opined that it was necessary to adopt new institutional arrangements.

In order to foster economic integration, two types of intervention can be contemplated. Negative integration measures make it possible to restrict or prohibit discriminatory practices that hinder the free movement of goods, services, persons and capital. Positive integration measures, such as common policies or harmonized practices, strengthen economic ties.

In Canada, the free movement of goods is assured by section 121 of the *Constitution Act, 1867*. This so-called common market clause prohibits the erection of tariff barriers between the provinces, although it does not prevent other impediments to trade, usually qualified as non-tariff barriers. The mostly frequently mentioned hindrances are public procurement policies, policies governing alcohol, and farm marketing boards.

---

36. ECONOMIC COUNCIL OF CANADA, *op. cit.*, 1991, p. 55.

However, it would appear that the scope and economic cost to trade of these barriers have been largely overestimated.[37]

The free movement of persons from one province to another, notably the right to settle and work, is a right inherent in Canadian citizenship, one that is strengthened by the *Canadian Charter of Rights and Freedoms*. Canadians are indeed highly mobile; it is estimated that, on average, 300 000 persons a year move from one province to another. However, French-speaking Quebecers are much less mobile than other Quebecers or other Canadians. Despite the rights accorded by the Charter, a number of obstacles to complete mobility persist in certain legislation. Examples include social programs, access to which may be curtailed by residency requirements; private pension schemes, which cannot usually be transferred from one employer to another; and trades and professions, in which residency requirements and professional recognition are taken into account at the time of hiring.

At present, no provision in the Canadian Constitution expressly guarantees the free movement of services or capital. The sections of the Constitution pertaining to the division of powers largely accord jurisdiction over services to the provinces; authority over capital is shared by the federal and provincial governments. It is by virtue of their exclusive jurisdiction over ownership and civil rights that the provinces may regulate these sectors.

The Constitution grants the federal government exclusive power[38] over specific services such as sea shipping and the banks. Furthermore, by virtue of its residual power, the national dimensions doctrine,[39] the constitutional clause respecting businesses and interprovincial or international facilities (paragraph 92(10)(a)) and its declaratory power, the federal government has acquired sole jurisdiction over numerous other services and service enterprises.[40] While the federal government enjoys

---

37. See the study prepared for the Committee to Examine any Offer of a New Constitutional Partnership by C. FLUET, *Le coût des entraves à la circulation des biens et des facteurs dans l'union économique canadienne*, January 1992, 40 pp.

38. See section 5.2.1, "*The current state of federal services*".

39. This theory was introduced by the courts. It maintains that the federal Parliament is granted authority over matters of such import that they affect Canada as a whole.

40. This applies to radio and television broadcasting, oil and gas pipelines, the aeronautics sector, cablecasting, the interprovincial or international interconnections of electrical systems, interprovincial bus systems, telecommunications, grain elevators, railways and nuclear power plants.

rather limited power to intervene in order to ensure the free movement of capital and even more limited power to ensure the free movement of services, the mobility of services and capital is not subject to major hindrances, above all because provincial legislation is by and large harmonized.

Positive integration measures in the Canadian economic union have been achieved through common policies in a number of fields and the harmonization of legislation, regulations or standards in other areas.

Common policies include, of course, external trade policy and monetary policy, whose elaboration and implementation are the exclusive preserve of the federal government, which nonetheless consults the provincial governments in various more or less formal ways. Other common policies concern fields in which Ottawa exercises sole jurisdiction, such as competition and telecommunications, and areas subject to shared jurisdiction, such as transportation, taxation, agriculture, fisheries, labour, immigration and social programs, to name but a few.

It is the federal government that is invested with exclusive constitutional power over competition, a policy based essentially on the *Competition Act* which, to some extent, establishes a single competition code applicable to Canada as a whole. The Act provides a framework aimed at preserving and encouraging the unhindered action of market forces. Any person, corporation or agency that feels its rights under the Act have been violated may lodge a complaint which, if it seems founded, will be heard by the Competition Tribunal, a specialized body.

Transportation policy falls under federal and provincial jurisdiction. The federal government exercises exclusive jurisdiction in the realm of aeronautics and partial jurisdiction over other modes of transport, depending on the scope of a firm's operations. In the maritime sector, Ottawa fully regulates navigation but is only partly responsible for transport. Companies operating other types of transportation enterprises are subject to federal regulations when their operations are interprovincial or international in scope.

In the field of social policy, the provinces exercise general jurisdiction. They share jurisdiction with the federal government with regard to pension

plans and old age pensions;[41] Ottawa has exclusive power to legislate with respect to unemployment insurance. Beyond the powers conferred on it by the Constitution, the federal government elaborates social policy by way of its spending power. It thus sets the standards and conditions with which the provinces must comply in order to obtain federal grants.

Harmonization within the Canadian economic union is achieved in two ways, through imitation and cooperation. Imitation means that one government uses a statute or regulation adopted by another government as a basis for elaborating its own legislation. The taxation system is a good example. Regulations governing the administration of securities are an example of harmonization through cooperation. One of the most striking results of such harmonization has been the adoption of the *National Policy Statement*, which applies to all of the provinces except Newfoundland.

b) Maintaining the economic space

Were it to achieve sovereignty, Québec would put an end to its political integration under the Canadian federation while seeking to maintain economic integration with its former partners. Some observers feel the process is similar to the one the European Community is following, while others feel that the opposite is true.

With respect to the process adopted by Québec, one premise put forward is that there is no close correlation between economic integration and political integration, that it is indeed possible to diminish the latter without compromising the former. To the contrary, among the 12 EC member States, the search for broader economic integration was accompanied by political integration. However, the question of where such political integration will stop has yet to be answered.

The method of operation of common institutions in the EC cannot be directly applied to the institutions created in the new Québec-Canada economic space. For example, decision-making among the EC member States has gradually shifted from unanimity to a qualified majority. It is hard to imagine an economic association between Canada and a sovereign Québec operating otherwise than on the basis of unanimity.

---

41. Constitutional amendments in 1951 and 1964 enabled the federal Parliament to legislate in this field subject to the absence of provincial statutes in these fields. Québec set up its own pension plan in 1965 and the federal government followed suit the same year, using the Québec scheme as a model. Both pension plans are fully transferable.

Original solutions should therefore be put forward and it will be necessary to find the means of incorporating into one or more treaties the economic interrelations now arising from existing constitutional texts or federal statutes.

Bearing in mind the openness of its economy and its integration into North America overall, it would be in the interests of a sovereign Québec to maintain at least the essential provisions of the current common market. The provinces, in particular Québec and Ontario, whose economies are interdependent, have a mutual interest in avoiding the fragmentation of the economic space they share.

Québec's and Canada's willingness to maintain the Canadian economic space could result in a broad treaty similar to the one that unites the member countries of the EC. Among the provisions that such a treaty should contain, mention should be made of the commitment by the two governments to ensure the free movement of goods, services and production factors. However, since hindrances to free circulation are tolerated under the existing economic union, the treaty could also specify the exceptions on which the parties agree.

To give the treaty the same force as a constitutional text, it would be necessary to bolster the clause concerning free circulation by a judicial mechanism such as the European Court of Justice, which individuals and corporations can approach. Such a mechanism would give the treaty credibility and enable economic agents to operate under uniform rules. In addition to affirming freedom of movement, it would be necessary to stipulate in which sectors the two States wish to maintain common policies or harmonize their intervention. This approach would undoubtedly amplify the negative integration of the two economies and curtail the positive integration in relation to the situation that now obtains.

The implementation of such an agreement pertaining to freedom of movement would create fewer problems with respect to goods than in other instances. To ensure the free circulation of the residents of the two countries, account would have to be taken of the incidence of different policies governing immigration, social programs or State security. In the absence of sufficient harmonization, citizenship checks at the borders might be necessary. As is the case in the European Community, the right to circulate freely could be tied to economic considerations and, consequently, any discrimination in the two States based on the nationality of workers would have to be eliminated. This right could nonetheless be subject to limitations dictated by public order, security and health.

In order to follow up on their commitment to ensure the free movement of services, the two States should review their legislation to eliminate factors of discrimination based on residence. To guarantee the free movement of capital, it would be necessary to adapt a number of statutes or practices concerning financial institutions, especially in the banking sector.[42]

Common trade and monetary policies would be maintained with a view to preserving, in essence, the current economic space. As in the EC, a common competition policy could also be adopted. However, it is possible that other fields would not be harmonized, i.e. transportation, taxation, agriculture, fisheries, labour, telecommunications, immigration and social programs over which the federal government now exercises legislative jurisdiction.

The treaty between Canada and Québec should stipulate the institutional arrangements that would pave the way for the implementation of the agreement. Based on the EC or Canada-United States Free Trade Agreement, a three-tiered institutional framework could be contemplated, centred on decision-making, the settlement of disputes and the management of day-to-day affairs.

A number of experts have pointed out that institutional problems and, in particular, the matter of determining the decision-making process that would prevail under the new economic association[43] might mean that the parties fail to reach agreement. Other experts have suggested that, as is the case under the FTA, decisions could be reached on the basis of a consensus. Still others feel that adopting this stance would give Québec a veto, which would be unacceptable to the canadian provinces. A bilateral relationship of this nature has inherent in it potential stumbling blocks that could paralyze the operation of the agreement, although it is hard to envisage another method of operation between two sovereign States. To attenuate the potential for inflexible opposition, Roma Dauphin and Stanislas Slosar suggested making all decisions subject to the prior recommendation of a committee of independent experts.[44]

---

42. SOCIÉTÉ D'AVOCATS DESJARDINS DUCHARME, *op. cit.*

43. Ivan BERNIER, *op. cit.*; and Gordon RITCHIE, January 29, 1992 (CEAS-660).

44. Roma DAUPHIN and Stanislas SLOSAR, *Étude des modalités de maintien de l'espace économique canadien actuel après l'accession du Québec à la souveraineté*, modified preliminary version, March 1992, p. 35.

Provision must also be made for a method of settling disputes. Several solutions are possible. The right to bring before the national courts disputes concerning provisions in the treaty or, as the case may be, the right to appeal to a common judicial body, could be reserved solely for governments, which would act on behalf of their economic agents. However, if individuals or corporations were able to directly exercise such recourse, the treaty would offer better protection, although the decisions handed down by the common legal entity would have to be recognized and enforceable under the legal system of each country, as is the case in the EC.

To ensure the management of day-to-day affairs, an international secretariat made up of representatives of the two States would seem appropriate.

Under such an agreement, the two parties would agree to speak as one and would adopt common positions in institutions such as the FTA or GATT. However, they could preserve their right to be represented as signatory countries and be represented during deliberations.

Preserving the existing economic space through such a treaty would entail advantages and disadvantages. A bilateral treaty would have the advantage of providing a fairly flexible legal framework suited to the elaboration of an economic association. If it were ratified prior to the coming into force of sovereignty, it would help smooth over the transitional period to the extent that the agreement would reduce uncertainty and reassure economic agents. However, the elaboration, negotiation and ratification of a broad agreement would nonetheless create problems. A number of experts have pinpointed constraints related to the political climate, the designation of an interlocutor and the limited time available to the parties to reach such an agreement.

Various observers have mentioned the possibility that Canada-Québec relations would be acrimonious when Québec acceded to sovereignty.[45] Such a situation could very well hinder the conclusion of a treaty, although it has been suggested that reciprocal economic interests, especially those of Québec and Ontario, are such than an agreement to

---

45. Bernard LANDRY and Gordon RITCHIE, January 29, 1992 (CEAS-631). John MCCALLUM and Chris GREEN, *Parting as Friends*, Toronto: C.D. Howe Institute, 1991, 114 pp. According to these authors, the degree of animosity will depend on perceptions of the process's legitimacy. With regard to the atmosphere of confrontation and a trade war, see Patrick GRADY, *The Economic Consequences of Québec Sovereignty*, Vancouver: Fraser Institute, 1991, 168 pp.

preserve the essence of the economic space would necessarily (and fairly promptly) be concluded. The Committee was unable to settle this issue.

Certain experts[46] have indicated that a sovereign Québec could encounter problems in designating the interlocutor with which it would negotiate. Ottawa's legitimacy in negotiating unilaterally on behalf of the other provinces once Québec achieves sovereignty has been called into question in some quarters. However, it should be noted that the federal government would maintain complete jurisdiction over external relations and trade policy. Were the problem to arise, it would be strictly political in nature.

It has also been noted that the negotiation of a global treaty and, above all, the elaboration of institutional arrangements are undertakings that could demand more time than the 12 months stipulated in the *Act respecting the process for determining the political and constitutional future of Québec* between the referendum and the declaration of sovereignty. If need be, the parties should reach agreement on transitional solutions that would apply while a permanent treaty was being negotiated.

Some experts think that a *de facto* customs union could be established between the two States[47] as a transitional measure. Québec could thus implement Canadian trade policy and allow the free circulation of goods, services and capital provided such treatment was reciprocated.

Should it prove impossible to maintain the Canadian economic union intact, alternative solutions could be contemplated to preserve its basic components. Québec and Canada could agree to maintain the customs union, a common monetary policy and to harmonize a number of sectorial policies.

The customs union is essentially a commercial agreement whereby the States draw up a common trade policy governing their dealings with other countries and adopt free trade in goods and services between themselves. An agreement of this sort between Québec and Canada would entail a smaller degree of economic integration than is presently the case, although it might make it possible to avoid unduly disturbing trade. The elaboration of common trade and monetary policies would demand the establishment of institutional arrangements under which the parties could

---

46. Roma DAUPHIN and Stanislas SLOSAR, *op. cit.*; Gordon RITCHIE, January 29, 1992 (CEAS-660).

47. Roma DAUPHIN and Stanislas SLOSAR, *op. cit.*, pp. 53 *et seq.*

reach a consensus and avoid stalemates. Among the policies that need to be harmonized, mention should be made of competition policy, whose uniformity would encourage trade between the two trading partners.

Failing agreement on this type of customs union, a second solution might be a free trade agreement. According to some experts, this is the only realistic solution, bearing in mind the anticipated difficulty in reaching agreement on adequate institutional arrangements with regard to other more advanced forms of economic association. A reorganization of Québec-Canada economic relations along the lines of the Canada-United States Free Trade Agreement would significantly affect the existing economic space, in that negative integration would be minimal and positive integration virtually non-existent.

As for the free circulation of goods, all products that failed to satisfy criteria governing place of origin would be subject to the customs duties applying to other countries. The free circulation of persons could be limited to what is envisaged under the FTA with respect to business travel[48] and the same would be true of the free circulation of services.

Broadly speaking, the members of the Committee surmise that it is obviously in the interests of the parties concerned to maintain the Canadian economic space. However, in the event Québec achieves sovereignty, some experts do not rule out the possibility of the two countries encountering problems in reaching agreement, by and large for reasons of an institutional nature. At this juncture, the partners would have to accept a lesser degree of integration, at least in the short run. Proceeding in this manner could harm both countries' economies. Still other experts, to the contrary, feel that the parties, fully aware of the economic implications, will conclude the necessary agreements at an opportune moment in order to preserve the economic space that Québec shares with its Canadian partners.

C) Relations with the United States

Regional commercial agreements have been adopted at the same time as freer multilateral trade has been achieved under GATT, which allows for the establishment of free-trade zones or customs unions, pursuant to article

---

48. Under the FTA, the two governments have adapted their regulations pertaining to immigration in order to facilitate the temporary sojourns of businesspeople.

XXIV.[49] Regional economic agreements are usually aimed at broadening the markets of domestic enterprises, bolstering productivity and ensuring stable access to the markets of the main trading partners. While GATT has made possible since its inception a substantial reduction in customs tariffs, it has experienced considerable difficulty in delineating the matter of non-tariff barriers and achieving a consensus on the elimination of such barriers.

This is precisely the objective Canada was pursuing when it undertook negotiations on the FTA, in the wake of the recommendation of the Royal Commission on the Economic Union and Development Prospects for Canada (MacDonald Commission). Indeed, as the Royal Commission noted, what was remarkable about the Canadian situation was not the extent to which its GNP was tied to external trade, but its dependency on a single country. Over the years, non-tariff barriers had gradually replaced tariff barriers as protectionist measures and Canadian producers were constantly at risk of having access to the U.S. market cut off. The first objective of Canada's trade policy was to ensure more secure access to the American market. Consequently, a regional approach imposed itself and led the Canadian and American governments to negotiate a free trade agreement.

Québec supported this undertaking. Should it achieve sovereignty, and bearing in mind that 75 percent of its international exports are shipped to the United States, Québec should seek to adhere to this regional agreement and it will undoubtedly do so. This possibility raises several questions. How should Québec go about adhering to such an agreement? What would be the effect of an economic association between Québec and Canada? Might the United States oppose Québec's adherence to the agreement, or demand additional concessions?

The answer to the first question is clear. Succession would not occur automatically under such a bilateral agreement. The FTA could only apply to Québec if agreement were reached with Canada and the United States on the changes to be effected. Such changes would centre by and large on the institutions that manage the bilateral agreement[50] and additions to the latter specifying Québec's commitments.

---

49. Article XXIV seeks to ensure that freer trade centres "substantially on all the trade", that integration proceeds according to an established program and within a reasonable time, and that existing conventional trading patterns with outside countries are not curtailed.

50. See Ivan BERNIER, *op. cit.*, p. 60, concerning the question of institutional changes.

Several points concerning the effects of an economic association between Québec and Canada warrant attention. If Québec and Canada maintained the same customs system under a customs union or any other arrangement representing an even higher degree of integration, Québec and Canada would likely have to speak with a single voice in the institutions of the FTA, where they would be obliged to adopt a common stance, as is the case with EC member States and their representation under GATT. In the event that the highest level of economic integration achieved by Québec and Canada resulted in a free-trade zone, the current FTA could only become trilateral if the United States and Canada so agreed and the rules of origin and other provisions in both agreements were virtually identical. Institutions would also have to be adapted to take into account a third partner. According to some observers, this would be the most sensitive problem to solve. Were such conditions not met, Québec could at best conclude a second bilateral agreement with the United States.

Most of the experts the Committee heard[51] agreed that it was unlikely that the United States would oppose Québec's adherence to the FTA, especially if an economic association agreement between Québec and Canada allowed for the maintenance, by and large, of the current economic union. To the extent that the United States was seeking through the agreement to obtain guaranteed access to Canadian resources, notably in the energy field, including electricity, Québec's inclusion in the FTA would maintain this advantage. Provisions in the FTA pertaining to services and investment are also deemed to be of unquestionable advantage to the United States. Some experts also noted that, for political and strategic reasons, the United States would want to avoid conflict and preserve existing arrangements with Canada. A number of experts indicated that a refusal on the part of the United States is always possible, in particular because of rising protectionism.[52]

Would the United States take advantage of the situation to demand concessions beyond what is needed to adapt the Agreement to the new situation? In this regard, a distinction must be made between the constraints inherent in the status of a signatory State and the new requirements that the United States might seek to negotiate. A sovereign Québec that was part of the FTA would have to implement provisions in the FTA concerning government procurement and services to which it is not subject as a province. However, would it have to make concessions

---

51. See in particular Ivan BERNIER, January 22, 1992 (CEAS-531) and Joseph T. JOCKEL, February 12, 1992 (CEAS-881).

52. See in particular Joseph T. JOCKEL, February 12, 1992 (CEAS-881).

on agricultural supply management systems, industrial development grants, culture and trade in automobiles as a number of experts and witnesses have suggested? The United States could hardly negotiate additional concessions with Québec alone, as such concessions would have to include Canada. Some observers maintain that reopening the FTA would risk jeopardizing the Agreement, in light of the limited support it enjoys in Canada. The attitude of the United States would undoubtedly reflect its willingness to establish continental free trade that embraces Québec, the conditions of which would be negotiated without special favour for the latter.

D) Leading factors in particular sectors

Some sectors of the Québec economy benefit from protection measures that could be called into question through changes in international trade and the tendency toward free trade, or through Québec's accession to the status of a sovereign State. In the agribusiness sector, supply management systems make it possible to control domestic output and imports. Quotas are applied in the textile and clothing sector. In the automobile sector, a sectorial agreement makes provision for duty-free trade in products that meet local content requirements.

Special factors prevail in these sectors and a sovereign Québec should take this into account when it elaborates its trade policy.

a) Agribusiness

In 1990, gross domestic output in the agribusiness sector[53] totalled roughly $14 billion, equivalent to 10 percent of that in the Québec economy overall. Some 120 000 people work in this sector. International food and beverage exports are worth some $1.1 billion, and imports, $1.2 billion.

Few reliable or recent statistics are available on interprovincial trade that can be used to obtain a complete picture of the situation. A recent assessement conducted by the ministère de l'Agriculture, des Pêcheries et

---

53. The agribusiness sector includes fisheries, agriculture and the production of food and beverages. The statistics cited are drawn from GOUVERNEMENT DU QUÉBEC, MINISTÈRE DE L'AGRICULTURE, DES PÊCHERIES ET DE L'ALIMENTATION, *Profil sectoriel de l'industrie bio-alimentaire au Québec*, 1991, 79 pp.

de l'Alimentation indicates that in 1988 trade in agricultural and food products resulted in a $331 million deficit. It is in the meat and cereal grain sub-sectors that the deficit appears to be the most striking, i.e. $641 million and $317 million, respectively. However, Québec appears to have recorded a $425 million surplus in dairy products.

Four farm products are governed by national supply management systems, namely eggs, chicken, turkey and industrial milk[54], which account for 50 percent of Québec farm income. Production levels are established by a national marketing board. Each province's share of this quota has been established on an historical basis and varies from product to product. Québec has roughly 48 percent of the national industrial milk quota, but only 17 percent and 31 percent, respectively, of egg and chicken quotas.

Provincial marketing boards play a complementary role in relation to their federal counterpart. Generally speaking, they divide their share of the national quota among local producers, manage quota operations and set certain prices, such as those for chicken, turkey and some categories of eggs.

In addition to coordinating the national industrial milk supply management system, the Canadian Dairy Commission sets the target price of this kind of milk, the support price for butter and powdered skim milk, and makes direct payments to producers. In 1990-1991, such payments totalled $254 million, of which over $120 million was paid to Québec producers. In the case of other products subject to quotas, producers do not receive direct payments.

An effective supply management system requires that imports be limited and quotas applied to output, which is contrary to GATT rules (article XI prohibits all quantitative restrictions). Agriculture is an exception to this rule when a domestic supply management system exists.

The combination of production and import quotas and a pricing system based on production costs explain why Canadian prices are appreciably higher than those on the American or international markets. World prices are lower still, given that overproduction exists at the international level, encouraged, for example, by those States that subsidize their exports. This is one of the main problems that GATT has tackled under the Uruguay Round and it has proven to be a stumbling block to the conclusion of an agreement.

---

54. Each province is self-sufficient in bulk milk; quantities and prices are governed by provincial marketing boards.

The Dunkel report proposes that the agriculture sector be subjected to the same rules that apply to other products. Among other things, it suggests transforming all import restriction measures into equivalent tariffs, which would then be gradually reduced. Such a move would result in the establishment of tariffs of up to 300 percent of the import price in the case of dairy products.

Several hypotheses have been advanced with regard to the consequences of these proposals on the sectors subject to quotas. Some observers feel that the adoption of the Dunkel report would perforce lead to the dismantling of supply management systems and would engender a marked decline in farm incomes and the value of assets in all of the sectors subject to quotas. Still other experts think the application of the rules in the Dunkel report would not mean the end of supply management systems but would significantly alter their operating methods. The Committee has been unable to reach a conclusion in this respect.

Robert Saint-Louis[55] feels that Québec's acceding to sovereignty would not markedly affect the sectors subject to quotas, as it is in Canada's interests to maintain the existing division of markets. Three reasons are put forward in support of this assertion: Québec is a net importer of food and beverages and thus enjoys a favourable negotiating position; GATT rules would compel the parties to maintain access to historic markets; and Canada is not subject to serious problems of market imbalance.

According to Informetrica,[56] were Québec to achieve sovereignty, it would be impossible to maintain a single supply management system on products subject to quotas. At best, Québec should operate its own management system.

Although the balance in Québec's agribusiness trade with the other provinces would indeed place it in a good negotiating position, it is not certain that GATT could protect historic market shares. An expert consulted in this respect concluded that [TRANSLATION] "the argument based on article XI *in fine* of GATT is not entirely unfounded, but it would be unwise to place too much hope in this provision [given the absence of a precedent]. Were Québec to accede to sovereignty, with respect to GATT rules, only a free trade or economic union agreement

---

55. Robert SAINT-LOUIS, *Impacts de l'accession du Québec à la souveraineté sur les conditions de développement du secteur agro-alimentaire*, Québec, March 1992, 43 pp.

56. INFORMETRICA, *Supply Management: Dairy*, Ottawa, October 1991, 23 pp.; *Supply Management: Poultry and Eggs*, Ottawa, October 1991, 23 pp.

that complies with article XXIV could ensure sustained preferential access of Québec farm products to the Canadian market and vice versa."[57]

If the supply management systems were indeed jeopardized and a return to the free market were contemplated, the loss of the value of production quotas would be a cause for concern.

It would therefore seem that the upheavals that might occur in the agribusiness sector, were Québec to achieve sovereignty, are similar to those that are to be feared should GATT press for freer trade in this sector.

b) Textiles and clothing

The textile and clothing industries are highly integrated. While the textile industry is almost equally divided between Québec and Ontario, the clothing industry is heavily centred in Québec and, in particular, the Montréal region.

In 1988, roughly 48 percent of Canadian textile output came from Québec and 45 percent from Ontario. The Québec textile industry employed some 30 000 workers and the Ontario industry, 26 000.

However, 56 percent of clothing industry jobs are located in Québec and only 30 percent in Ontario. Because the clothing industry is more labour-intensive than the textile sector, it accounts for 115 000 jobs in Canada, compared with 62 000 in the textile industry. In 1988, shipments from both industrial sectors totalled just over $7 billion.

The market for textile and clothing products is by and large domestic. In 1987, Québec's international exports of primary textiles accounted for only 10 percent of the shipments by value, those of textiles for 5 percent, and of clothing, 2 percent.

The textile industry and, even more so, the clothing industry, are heavily protected from international competition by the imposition of import quotas under the Multifibre Agreement (MFA) and the imposition of stiff customs tariffs.

The MFA has been set up under the auspices of GATT and enables the industrialized nations to negotiate agreements on the self-limitation of

---

57. Armand DE MESTRAL, *Avis sur l'interprétation de l'article XI du GATT*, Montréal, April 1992, p. 6.

textile and clothing exports with low-wage countries. Canada has negotiated 28 bilateral self-limitation agreements. Canada imposes customs tariffs of 13 percent, 21.5 percent and 24.7 percent on yarns, fabrics and clothing, respectively. Despite such trade barriers, in 1987 Canada recorded trade deficits of $1.4 billion, $517 million and $1.8 billion with regard to primary textiles, textiles and clothing, respectively. In the first two instances, the United States was the main supplier, accounting for roughly 40 percent of imports; in the case of clothing, three-quarters of imports came from non-OECD countries.

Proposals now under discussion at the Uruguay Round of GATT call for the gradual elimination of the MFA over 10 years and a substantial 30 percent reduction in tariffs.

Freer trade in the foregoing products has been achieved under the FTA. The tariffs that Canada and the United States impose on textiles and clothing will be gradually abolished in 10 equal annual increments between 1989 and 1998. Special rules of origin have been elaborated with respect to these sectors. In order to benefit from the elimination of tariff barriers, a product must have undergone at least two phases of processing in the free trade zone. However, the FTA allows to some extent the duty-free exporting of clothing made of fabric imported from other countries. A similar, but temporary rule, applies to textiles. Overall, the reduction in tariffs and the formulation of rules of origin appear to favour the American industry more than its Canadian counterpart. Eliminating tariffs offers less of a comparative advantage to Canadian producers to the extent that American tariffs are lower than those prevailing in Canada. Moreover, the United States produces more primary textiles, which enables it to more readily satisfy the rules of origin.

A number of factors are already discernible in this sector. At the international level, the abolition of the MFA and, at the regional level, the loss of tariff protection with respect to the United States will compel the textile industry and, above all, the clothing industry, to adapt to increasingly keen competition. Recourse to safeguards, anti-dumping duties and countervailing duties will cushion the shock, but it seems inevitable that the industry will have to quickly seek out new markets.[58]

Should Québec achieve sovereignty, a number of considerations pertaining to this sector should be taken into account.

---

58. André CÔTÉ, March 11, 1992 (CEAS-1073); STRADECO, *Étude sur l'impact de l'accession du Québec à la souveraineté sur l'industrie du textile et celle du vêtement*, Montréal, January 1992, 42 pp.

The first question to be addressed is twofold, i.e. the distribution of quotas and the level of tariffs. The federal government now administers bilateral agreements and monitors imports. Depending on the type of economic association Québec achieves with Canada, import quotas could be administered in different ways. André Côté believes that, were total economic union attained, the establishment, negotiation and management of quotas could be carried out by means of cooperation between the two sovereign States, possibly by calling upon an administrative body to reconcile the parties' interests. The current structure of quotas could be maintained. However, in the absence of an economic association, the author assumes that a portion of existing Canadian quotas would be attributed to Québec in the wake of negotiations with Canada, probably on the basis of the partners' historical output and imports.

Because the Québec industry and that of the other provinces are highly integrated—the output of one serves as an input in the other—and the market for these enterprises is essentially domestic, the imposition of trade barriers between Québec and Canada would inevitably have a strong negative impact on competitiveness in these sectors.

Were the United States, Canada and Québec to conclude a tripartite free trade agreement, it would be necessary to ensure that the rules of origin do not become an additional constraint for Québec and Canadian producers, whose output is highly integrated.

If the MFA is not abolished, Québec would have to participate in the administration of new bilateral agreements, the monitoring of imports subject to quotas, the establishment of the levels of such quotas, the attendant negotiations, and management of the quotas. Even if the MFA were abolished, Québec would have to intervene during the 10-year transitional period during which the tariffs would be eliminated.

c) The automobile industry

The automobile industry, especially the vehicle and new parts manufacturing sector, is governed by the Auto Pact, a sectorial agreement that Canada and the United States signed in 1965. The agreement allows the duty-free entry of vehicles and parts provided that certain conditions are met, depending on the country. While the United States perceives the agreement as a form of sectorial free trade subject to rules of origin and strictly bilateral application, Canada has considerably broadened its scope. Provided that a firm covered by the Pact complies with the safeguard clauses, it may import duty free not only from the United States but from

any country. These safeguard clauses contain an obligation for the firm to maintain a production to sales ratio of 1:1 with regard to each class of vehicles. Moreover, manufacturers must commit themselves to maintaining a level of local added value equivalent to between 40 percent and 60 percent, depending on the class of vehicle.

This sectorial agreement was incorporated into the FTA with a number of modifications. The rules of origin are now more stringent and only certain manufacturers, excluding most Asian automakers, may benefit from its advantages.

The Auto Pact enabled Canada to increase its share of North American output from 5 percent during the 1950s to 18 percent in 1991. The Canadian automobile manufacturing sector employs roughly 150 000 workers. In 1990, Canadian exports of vehicles and parts totalled $34 billion, resulting in a $3 billion surplus in trade. The industry relies on exports: Québec sells 80 percent of its production outside Canada and Ontario, 85 percent.

Ontario has benefited the most from the Auto Pact as it accounts for 91 percent of the $43 billion worth of vehicles and parts produced in Canada. It also accounts for about 115 000 manufacturing jobs, compared with 12 000 in Québec.

Leading factors in the sector are affected by the North American automobile manufacturing industry and the FTA.

The North American light vehicle manufacturing sector, especially the Big Three automakers, will have to streamline production. Growth in demand has faltered noticeably, dropping from 36 percent during the 1970s to 6.4 percent in the subsequent decade. This situation has resulted, in part, from slower population growth, an aging population and market saturation. Over the coming decade, growth is not expected to exceed 1 percent a year.

Moreover, the domestic market share of North American auto manufacturers has slipped from 97 percent during the 1960s to 80 percent during the 1980s. The number of vehicles manufactured declined by 8 percent, from 126 million between 1970 and 1979 to 116 million between 1980 and 1989.

In the FTA, Canada and the United States acknowledge "the need to ensure the industry in both countries [prospers] in the future" (article 1004) and, to this end, they have agreed to set up a select committee to

assess the situation and propose measures designed to boost competitiveness on domestic and external markets. Pressure is being exerted to increase the percentage of local content in vehicles made in North America from the current 50 percent to 60 percent.

In order to ascertain the impact of Québec's accession to sovereignty, DesRosiers Automotive Consultants examined several scenarios: Québec's trade relations could be managed solely by GATT with or without import tariffs on automobiles; Québec could continue to participate in the Canada-United States Free Trade Agreement and the Auto Pact; or Québec could negotiate its own free trade agreement and its own auto pact. The latter scenario is deemed to be highly unrealistic, bearing in mind the size of the Québec market.

Of the other three scenarios, only Québec's continued adherence to the FTA and the Auto Pact would avoid additional costs for Québec manufacturers. The study points out that such an arrangement may not be possible, given that protectionists in the U.S. would probably take advantage of the opportunity to renegotiate or terminate the Auto Pact. If such were the case, Québec and Canada would obviously be affected, in particular Ontario. As for reopening the FTA and the Auto Pact, Ronald J. Wonnacott maintains that Québec's acceding to sovereignty would effectively jeopardize the FTA and that the Auto Pact would be the component of this agreement least likely to survive.[59] Opposition to the Auto Pact is growing in the United States despite support for it by the Big Three automakers. According to Ronald J. Wonnacott, if Canada risked losing access to the American market with the end of the Auto Pact and the FTA, Québec would run the same risk, in addition to the risk that the Auto Pact would continue with Canada but not Québec. It should be noted that Ronald J. Wonnacott's analysis precludes economic association between Québec and Canada.

Rodrigue Tremblay stresses that one of the main reasons for which the federal government decided to negotiate a broad free trade agreement with the United States was the fear that the Auto Pact would have to be renegotiated in isolation.[60] Bearing in mind that one-quarter of the Ontario manufacturing sector depends on the auto industry, it was more

---

59. Ronald J. WONNACOTT, "Reconstructing North American Free Trade Following Québec's Separation: What Can Be Assumed?" in *Broken Links*, Toronto: C.D. Howe Institute, October 1991, pp. 20-44.

60. Rodrigue TREMBLAY, "Constitutional Political Economy and Trade Policies between Québec and Canada" in *Broken Links*, Toronto: C.D. Howe Institute, October 1991, pp. 70-81.

prudent to reopen the agreement within a broader framework. Rodrigue Tremblay has concluded that Canada must avoid doing so again and, as a result, that it must maintain the common market with Québec.

To summarize, the automobile industry has prospered in Canada and, above all, in Ontario, by and large because of the Auto Pact. This sectorial free trade agreement has been incorporated into the Canada-United States Free Trade Agreement, which has preserved its essential features, especially the safeguard clauses. The termination of the FTA would not automatically mean the end of the Auto Pact but, given growing opposition to the latter, especially among American labour unions, such might be the case.

Were a sovereign Québec to reach an agreement with Canada to maintain at least a Canadian customs union, there would be less likelihood of the FTA and, consequently, the Auto Pact, being reopened. It is clearly in Ontario's strategic interests to preserve the Auto Pact as 115 000 manufacturing jobs in the province are tied to the automobile sector.

5.3.3 Border regions and the Outaouais region

The current economic union entails few major obstacles to the circulation of goods, services, manpower and capital between the provinces. In different regions of Québec that share a common border with another province, cross-border exchanges are part of everyday life. Québec's accession to sovereignty raises a number of questions that caused the Committee to commission a study[61] to identify the regions most affected by transborder flows. The study establishes the nature of such flows and the implications of Québec sovereignty for the regions concerned.

A) The territories in question

There are 18 territories in Québec encompassing various municipalities that border on another province, i.e. the Communauté urbaine de l'Outaouais (CUO) and 17 regional county municipalities (RCMs). All told, 610 000 Quebecers live in these border regions.

From the standpoint of population and the extent of commerce carried on, the principal border region is the territory formerly known as the Communauté régionale de l'Outaouais, now made up of the CUO and the Collines-de-l'Outaouais RCM. The territory has a population of just over 210 000. It alone among the border regions has a major urban centre, i.e. the Hull-Gatineau-Aylmer zone. The CUO's location near Ontario and the attraction of the Canadian capital on the other side of the Ottawa River make it the most strongly influenced of all the regions.

The other border RCMs have a population of approximately 400 000. When the municipalities the farthest from the border and which maintain closer ties with Québec than with a neighbouring province are excluded from these territories, the question of border regions directly concerns only 150 000 Quebecers.

B) Border regions other than the Outaouais urban region

Not counting the Hull area, which encompasses the Collines-de-l'Outaouais RCM, there are 16 RCMs that share a common border with another province. Those that share a border with Ontario are located in

---

61. Bernard VERMOT-DESROCHES, *Régions limitrophes et accession du Québec à la souveraineté*, Trois-Rivières, March 1992, 66 pp. and appendices.

the Abitibi-Témiscamingue, Outaouais, Laurentides and Montérégie administrative regions. Those that share a border with New Brunswick or a direct link with Prince Edward Island are located in the Bas-Saint-Laurent and Gaspésie—Iles-de-la-Madeleine administrative regions. The Côte-Nord-du-Golfe-du-Saint-Laurent municipality, located in the Côte-Nord administrative region, shares a border with Newfoundland. There are no major urban centres in these 16 RCMs and they are generally found near an urban centre on the other side of the Québec border.

Purchases of goods and services in Ontario and New Brunswick are extensive and occasionally sufficient to prevent businesses from flourishing on the Québec side of the border. Although trade flows occur in both directions, they result in a deficit for Québec.

Generally speaking, manpower flows are marginal. They affect only a limited number of economic sectors, mainly the forest industry, the mining industry and public services, and are confined to a few RCMs. These daily migrations run almost exclusively from Québec to Ontario.

Public service flows centre mainly on the health sector. Although they are not deemed to be major links, they are an important factor in the quality of life of the residents concerned. Essentially, it is Quebecers from the border regions who must seek the specialized services offered in the neighbouring province.

In the realm of tourism, it is by and large secondary homes in Québec that explain interprovincial flows. This is the only sector in which the movement of people occurs from outside to within Québec; the phenomenon is concentrated primarily in the Abitibi-Témiscamingue region and the rural portion of the Outaouais region.

Of the 16 border RCMs in Québec, three depend extensively on the neighbouring provinces and are inextricably tied to the other province in terms of the labour market, trade and public services: the Témiscamingue RCM and Ontario, and the Témiscouata and Avignon RCMs and New Brunswick. The remaining RCMs do not depend extensively on the neighbouring province because they are fairly far removed from it or because they naturally look to major Québec centres.

In a number of border regions, socio-economic relations have for a long time been established at the regional or local level. Based on a study conducted among local interlocutors, the author of the study notes that the latter feel that, regardless of the political and constitutional future of Québec, trade will continue much as it does now; that possible customs

controls would not penalize residents in certain regions more than the current controls between Canada and the United States; that excessive control hardly seems plausible as it would cause an escalation of protectionist reprisals that would go against common interests and special, longstanding relations.[62]

Québec's accession to sovereignty within an uncertain or incomplete association would accentuate the peripheral nature of these regions. If such were the case, the government of a sovereign Québec should strive to bolster the public services affected and encourage the development of new commercial services in these regions.[63]

Because the bulk of goods and services flow into Québec, Bernard Vermot-Desroches has concluded that in the event of encumbrances to free movement across borders, Ontario and New Brunswick would be more heavily penalized than Québec.[64]

An agreement that allowed the free circulation of goods, services and manpower would maintain existing interprovincial links. It would be advantageous to the regions on both sides of the Québec-Canada border. In some of these regions, it would be advisable to conclude reciprocal agreements to ensure that residents receive adequate public services, especially in the realm of health care. Failing such an agreement, the Québec government should adopt the necessary measures to attenuate the impact on the regions in question.

C) The Outaouais region

The Committee heard testimony from Professor Maurice Saint-Germain, who conducted a study on the impact of transferring jurisdiction for federal public servants in Québec. It also received the Comité Outaouais and heard its president, Marcel Beaudry, who presented and submitted a summary of his committee's deliberations, entitled "L'Outaouais et son avenir économique". Professor Pierre Fortin also broached this topic when he appeared before the Committee.

Extensive socio-economic ties link the Québec portion of the Outaouais region to the Ottawa region. Indeed, some 60 000 workers cross the

---

62. *Ibid.*, p. 52.

63. *Ibid.*, p. 56.

64. *Ibid.*, p. 53.

Ottawa River every day in the Ottawa-Hull area. The interdependence of the Outaouais region and eastern Ontario is accentuated by the fact that most road, rail and air routes run through Ottawa. In additon, the presence of the federal government confers an adminstrative character on the Outaouais region, which does not have a diversified economic structure.

Given the scope of employment in the Ottawa region, manpower is the most significant factor to consider in terms of cross-border movements. Of 110 000 workers, nearly 42 000[65] work in Ontario; of this number, just over 40 percent work for the federal government. The other workers are employed mainly in the public and private services sectors and in commerce. Furthermore, nearly 20 000 Ontario residents work in the Québec portion of the Outaouais region, principally in the federal public service.

The major shopping centres in the Ottawa-Carleton region, along with specialized services, draw residents from Hull. While the construction of shopping centres in Hull and Gatineau has largely reduced cross-border shopping, in 1990 the retail trade and services sectors lost some $300 million in custom, equivalent to 23 percent of the region's total potential purchasing power.

Some 25 percent of hospital services received by Hull residents are provided by Ontario establishments, 30 percent of college-level educational services, 50 percent of university services and over 30 percent of recreational and cultural services. The figure for goods and commercial services is 23 percent.

In the urban part of the Outaouais region, the socio-economic consequences of sovereignty are inextricably tied to the transfer of federal public servants residing in Québec.

Some 21 400 federal employees, excluding those who work for public enterprises, reside in the Québec portion of the Outaouais region.[66] When the employees of federal enterprises are taken into account, the total rises to 25 400. The job market in the Hull region appears to total

---

65. COMITÉ OUTAOUAIS, *Rapport sur l'avenir économique de l'Outaouais dans une perspective de changements au statut politique et constitutionnel du Québec*, Hull, February 1992, p. 23.

66. Secor, *Constat de l'intégration économique de la région de la capitale fédérale, Étude 1*, prepared by the Comité sur l'avenir économique de l'Outaouais, final report, December 1991, p. 43.

22 700 federal jobs, nearly 3 000 of them in federal government enterprises. It should be noted that many Quebecers work in Ontario (17 800 person-years) and that slightly fewer Ontarians (15 100 person-years) work in Québec. Were Québec to attain sovereignty, the hypothesis according to which the residents of Québec and Canada would only be able to work in the public service of their respective countries might lead to the loss of jobs were such a hypothesis to materialize.

Various studies have been conducted on this question. Some of them indicate the number of jobs in the existing federal government that would be maintained in the new Québec public service located in the Outaouais region. As a starting point, Maurice Saint-Germain[67] estimated that 2 600 federal government jobs would be preserved in the region in the absence of special measures, based on the hypothesis that federal services would only be tailored to the proportion of the region's population in the overall population of Québec.

The Committee commissioned a study[68] on the transfer of responsibility for federal services. The experts sought to pinpoint those federal government services that would be repatriated and those that might remain in the Hull region. However, they stressed the importance of structuring the new public service for Québec as a whole, according to criteria pertaining to administrative and operational efficiency. The authors estimated that 11 100 jobs could remain in the region,[69] resulting in a deficit of 10 300 jobs in relation to the 21 400 employees of federal departments who reside in the Québec portion of the Outaouais region.

The Comité Outaouais analysed jobs in federal government departments and those in federal enterprises. It evaluated different scenarios aimed at preserving as many jobs as possible in the region and concluded that only about 13 000 jobs could be preserved, although the employees of federal departments and enterprises residing there total 25 400. Consequently, 12 400 individuals could lose their jobs.

Private-sector and parapublic enterprises employ some 85 000 Québec workers residing in Hull-Gatineau-Aylmer, of whom at least 24 000 work in Ontario. However, only 3 800 Ontario residents appear to be working in the non-governmental sector in Québec.

---

67. Maurice SAINT-GERMAIN, *Changer de capitale, Étude du transfert de juridiction des fonctionnaires fédéraux du Québec*, Ottawa, February 1992, p. 34.

68. Consortium Lamonde—Mallette, *op. cit.*, p. 61.

69. See table on page 76, section 5.2.3.

Some of these jobs, and jobs tied to federal government purchases of goods and services might become vulnerable should Québec attain sovereignty.[70]

The foregoing job losses would indirectly affect workers in other sectors of the Outaouais economy.[71]

All of the specialists invited to appear before the Committee acknowledged that vigorous measures must be initiated to limit the negative consequences of a change in political status and to protect employment in Hull. Three types of solutions have been contemplated to achieve such a reorganization: the addition of infrastructures, notably in the fields of education and health, as many of these services are offered in Ontario; the redeployment of the Québec public service; and support for economic expansion and diversification.

The witnesses also stressed the need for the Gouvernement du Québec to firmly display its resolve to maintain the Outaouais region's administrative vocation. The authors of the study on the transfer of responsibility for federal services proposed that Hull serve as the operational management centre for the ministères de l'Agriculture, des Approvisionnements et Services, de l'Énergie et des Ressources, de l'Environnement, des Loisirs, de la Chasse et de la Pêche, de la Sécurité du Revenu, des Transports and so on. Consequently, the study suggested that the same number of positions be transferred to Hull as would be created in Québec City when it becomes the national capital.

Other experts adopted similar approaches. In order to maintain employment at current levels in the Hull region, the Comité Outaouais recommended that nearly 20 000 government head office jobs be transferred to the region, in addition to those tied to the direct services offered to residents. Maurice Saint-Germain suggested that Hull become the headquarters of Gouvernement du Québec agencies and of certain supranational institutions that the Québec and Canadian governments might wish to establish.

Moreover, the authors of the report of the Comité Outaouais noted the need to adopt special measures pertaining to women, as many of them

---

70. Secor, *Les nouveaux arrangements constitutionnels et l'économie de l'Outaouais*, Étude 3, study prepared for the Comité d'étude sur l'avenir économique de l'Outaouais, final report, December 1991, pp. 5 et seq.

71. *Ibid.*, pp. 13 et seq.

occupy administrative support positions in the federal government. Were Québec to achieve sovereignty, it would be necessary to pinpoint government departments and agencies that play an administrative role and ensure that they are decentralized to Hull. Otherwise, the women concerned would have to seek employment elsewhere in Québec or in the private sector.[72]

Various experts also called for economic diversification through new investments, regardless of Québec's political status, in order to reduce the Outaouais region's economic vulnerability and ensure long-term stability. To this end, it was suggested that special attention be accorded sectors such as forests, high technology, tourism and services.

Witnesses appearing before the Committee highlighted the close interdependence between both sides of the Ottawa River and the need to maintain the free circulation of interregional flows. Were Québec to accede to sovereignty, it would be essential for the Outaouais region's economy that workers have access to the Ottawa region's labour market.

Despite the adoption of measures to facilitate this free circulation and notwithstanding the means proposed to diversify its economy, the Outaouais region would be the hardest hit by Québec's accession to sovereignty. Some experts examined the possibility of establishing a compensation fund to offset the anticipated drop in property values. They also suggested setting up a new administrative structure that would closely monitor the Québec portion of the Outaouais region's interests in terms of decentralization, the integration and organization of government services in Hull, and economic expansion.

Some experts hope that the Gouvernement du Québec will take the Québec portion of the Outaouais region's border location into account in legislation that may affect its economy, notably with regard to the sales tax, special taxes such as the fuel tax, and personal income tax.

A special status for the Hull-Ottawa region could be contemplated. Such a status would seek, for example, to ensure the complete mobility of goods, services and workers in the region, make it easier for the Québec and federal governments to restructure their respective public services, and coordinate the transfer of federal public servants from one government to another without undue haste.

---

72. COMITÉ OUTAOUAIS, *op. cit.*, p. 31.

5.3.4 The currency of a sovereign Québec

Québec's possible accession to sovereignty raises another question. What currency would prevail in Québec? The various options available should be assessed bearing in mind the interdependence of the Canadian and Québec economies and the striking openness of the Québec economy to the outside world. Moreover Québec should also ascertain the advisability of its joining the International Monetary Fund (IMF).

The Committee heard Professors Bernard Fortin, Vély Leroy and David E.W. Laidler. Geneviève Burdeau, Pierre Fortin, Patrick Grady and Gérard Coulombe also broached these matters when they appeared before the Committee. Furthermore, the Committee asked Professor Vély Leroy to produce the *Rapport concernant les options monétaires d'un Québec souverain*; it asked jurists Daniel Desjardins and Claude Gendron to prepare a study, *Le dollar canadien et un Québec souverain : certains aspects juridiques*.

A) Choosing a currency in a sovereign Québec

Essentially, Québec would have two options, i.e. it could use an existing currency or create a Québec currency.

The experts appearing before the Committee were unanimous in advocating the maintenance of the Canadian monetary union, which they feel offers Québec and Canada numerous advantages. In particular, they stressed that the continued use of the existing currency would help minimize economic uncertainty and, as a result, reassure the financial community.

In addition, maintaining the monetary union would make it easier to sustain the economic union between Québec and Canada and to negotiate the division of the debt. This option would enhance the stability of the Canadian dollar by preserving a more diversified economic base. At the appropriate moment, Québec should seek to establish, through an agreement with Canada, procedures for maintaining the Canadian monetary union. Such an agreement could focus on the conduct of monetary policy, the integration of financial markets, the harmonization of credit policies and, possibly, some degree of harmonization of fiscal policies. The government of a sovereign Québec could then declare Canadian currency to be legal tender within its borders.

In principle, the smooth operation of a monetary union demands a single currency, a single monetary authority, and a single monetary policy. According to various experts, if Québec exercised some influence over the conduct of the common monetary policy, the decisions made by the monetary authority would be more legitimate and the monetary union would thus enjoy greater stability.

To this end, the experts consulted suggest several methods of proceeding. A number of them advocate the decentralized application of the monetary policy through the establishment of regional reserve banks, based on the American system. Under this hypothesis, a central Québec bank and a central Canadian bank would be established, under a single authority. Other experts suggest that supranational Québec-Canada boards replace the board of directors and executive board of the Bank of Canada and that they be made responsible for elaborating monetary policy.

The second facet of the operation of the monetary union concerns the maintenance and integration of financial markets. According to the experts, such integration would heighten the monetary union's chances of succeeding. It would be important to pinpoint which facets of harmonization are crucial to maintaining the current level of integration of financial markets and the banking sector.

The third element in the operation of the monetary union centres on fiscal policy. The Canadian and Québec economies are, in many ways, highly interdependent and the experts consulted feel it would be advisable to achieve some degree of coordination of fiscal policies to facilitate the conduct of monetary policy.

As a member of a monetary union, Québec could share in seigniorage, equivalent to the net income the Bank of Canada derives from its assets, consisting mainly of federal government bonds. Québec's share of seignorage is estimated at roughly $600 million. It should be noted that the settlement of the question of seignoriage would affect the eventual division of the federal debt.

While all of the experts acknowledge that it is in Canada's and Québec's mutual interests to achieve a monetary union, some of them think that the current political climate and various constraints that both parties would have to accept might prove an obstacle to such an agreement.

Should Québec fail to reach a formal agreement with Canada prior to a declaration of sovereignty, it could legislate to continue to use the Canadian dollar within its territory by conferring on the currency the

power to discharge debt, in order to avoid a rupture with the Canadian monetary zone. Such a practice is common in the case of the succession of States. However, the situation could not endure without an agreement, as it would be highly unsatisfactory for one State or the other. For example, the uncertainty spawned by the absence of an agreement between the two States would inevitably disturb financial markets. If need be, it would be in Québec's and Canada's interests to promptly reach an agreement.

As for the seigniorage, of which it would be deprived in the absence of an agreement, Québec could take account of it when its share of the federal debt is established.

Some experts noted that it would be advantageous for Québec to obtain guarantees from Canada concerning supplies of currency in Québec financial institutions and the latters' access to the Canadian cheque clearing system. Such guarantees would be appropriate even if Québec deposit institutions were in a position to reach agreements with individual members of the Canadian Payment Association to obtain supplies of currency.

Most of the specialists invited before the Committee were of the opinion that Canadian authorities could hardly prevent Québec from using Canadian currency. In technical terms, some of the experts[73] pointed out that the only way for Canada to act in this manner would be to set up an exchange control system, which would be very costly.

Other specialists think that a sovereign Québec's unilateral decision to use the Canadian dollar could cause problems with regard to the formulation of Canadian monetary policy should the economic situation compel Québec to adopt economic and budgetary policies or financial regulations that diverged significantly from those prevailing in Canada.

A number of experts noted that any rupture in the Canadian monetary zone would also significantly affect Canada, whose money supply would be diminished by roughly one-quarter of its current volume. This could lead to a loss of confidence among the general public and on financial markets, thus making the Canadian dollar more vulnerable.

David Laidler told the Committee that economic agents might be disturbed, whether rightly or not, by the government of a sovereign

---

73. David LAIDLER and William ROBSON, *Two Nations, One Money?*, Toronto: C.D. Howe Institute, 1991, p. 5 and p. 29.

Québec's determination to preserve the Canadian currency, or that they might wonder about its ability to do so, especially if the Québec economy deteriorated markedly. Under the circumstances, there would be a greater risk of instability and a financial crisis, with all the disadvantages that implies: flight of capital, the need for government authorities to intervene and so on. These risks would be exacerbated in the absence of a formal agreement between the two countries.

The testimony of various experts before the Committee reveals that it would be in the economic interests of both parties to pursue the Canadian monetary union and to confirm this determination through a clear commitment to the future operation of the institutional system. The value of the Canadian dollar depends by and large on public confidence. It would be essential for Canada and Québec to avoid significantly altering such confidence, as both would suffer the consequences.

If Québec did not opt for the Canadian dollar, it could contemplate using American currency. It would have to legislate to make American currency legal tender within its borders. The experts appearing before the Committee did not closely examine this option, which has already been adopted by several countries. Indeed, the experts feel that it would be more natural for a sovereign Québec to envisage a monetary union with Canada rather than the United States, given the high degree of economic and institutional interdependence that now exists between Québec and Canada. However, it would be possible for a sovereign Québec to envision the use of U.S. currency, because of growing north-south trade. Such a choice would reflect the trend toward the gradual globalization of North American economies.

In the event that Québec achieved sovereignty, the government could also create a Québec currency, an economically viable option given the resources and structure of the Québec economy. It is worth noting that a number of countries similar in size to Québec already have their own currencies. This option would require the establishment of a central bank. If it issued its own currency, Québec would thus be in a position to elaborate a fairly autonomous monetary policy. At the same time, it would recover seigniorage. Québec should maintain the appropriate international reserves.

The main problem arising from the creation of a Québec currency would be to establish its credibility among economic agents and on financial markets, which would closely scrutizine signs of Québec's seriousness and determination. There is no doubt that they would monitor the government's attitude with regard to the rigour and direction of its

budgetary and financial policies, and the attitude of the new monetary authority.

Québec's withdrawal from the Canadian monetary zone could also adversely affect the stability of the Canadian dollar. Joint initiatives by Québec and Canada, such as the maintenance of the Canadian economic space, or agreements aimed at supporting the exchange rates of both currencies, would obviously help bolster the credibility of both new currencies. To facilitate the introduction of a Québec currency, most of the experts consulted advocate setting a fixed exchange rate against the Canadian or American dollar, even if it means curtailing the leeway of Québec monetary policy. In June 1991, 51 member nations of the International Monetary Fund maintained a fixed exchange rate in relation to a strong currency, such as the U.S. dollar or the French franc. Among these countries, Luxembourg and Belgium continue to maintain parity between the Belgian and Luxemburg francs.

In the event that a Québec currency were established, Québec and Canada would have to assume various transaction costs, including conversion fees, accounting costs in businesses and the costs inherent in the risk of currency fluctuations on futures contracts. Based on a recent study conducted by the European Community, some experts estimate that such costs would reach at least $400 million a year in a sovereign Québec. Moreover, Canada would have to assume similar costs.

Should it fail to set the exchange rate against another currency, Québec could let the rate vary depending on market forces. In theory, a country that adopts a floating exchange rate on its currency enjoys greater autonomy in conducting its monetary policy. While few experts envision this option in the wake of Québec's declaration of sovereignty, some of them do advocate it in the longer run should Québec decide to issue its own currency.

The creation of a Québec currency could, for some time, entail fairly significant economic and financial risks for Québec and, in all likelihood, Canada. It would certainly lead to the payment of a risk premium, which would result in higher interest rates than would be the case were the Canadian dollar to be maintained. Obviously, this is difficult to quantify and no expert attempted to do so.

All of the experts appearing before the Committee opined that the best option for Québec and Canada would be the use of the Canadian dollar. Québec would have other viable options at its disposal, including the

creation of a Québec currency whose value would be tied to the Canadian dollar.

B) Membership in the International Monetary Fund

Given that Québec already borrows on foreign markets and that it engages in extensive international trade, it would be in its interests to become a member of the International Monetary Fund. Foreign lenders consider membership in the IMF an advantage, as it offers an additional assurance that members will comply with their financial obligations. In addition, the credit margin at the disposal of IMF members affords them greater flexibility in the event of acute dislocations in their balance of payments.

To join the International Monetary Fund, Québec would follow the same procedure as other States that were not signatories of the original Statutes but wish to become members.[74] The admission criteria are quite straightforward. The applicant must be a State, exercise control over its external relations and be in a position to honour its commitments as a member.

The IMF establishes the amount of the subscription required of the new State, its voting rights and the amount of financial assistance it may obtain.

The IMF is not opposed to the use of common currencies or closely tied currencies, such as those of Belgium and Luxemburg. However, should Québec and Canada fail to reach an agreement on Québec's use of Canadian currency, the IMF could suggest to Québec that it obtain assurances from Canada that the latter will do nothing to prevent Québec from fulfilling its obligations to the IMF, although the organization's statutes do not require such an assurance.

5.3.5 The financial sector

The financial sector is one of the pivotal points of the Canadian economic union, as it affects the everyday lives of ordinary Canadians and economic agents. For this reason, were it to accede to sovereignty, Québec must ensure the smooth operation of all financial institutions. To shed light on this matter, the Committee asked Desjardins Ducharme, a law firm, to

---

74. Ivan BERNIER, *op. cit.*, pp. 49-53.

prepare a study[75] with a view to ascertaining the adjustments that would have to be made to the legal framework governing the financial sector.

By and large, the financial system as we now know it was set up in the wake of the Great Depression to bolster the confidence of economic agents and minimize conflicts of interest that arise when the same establishment provides an array of financial services.[76] At that time, the authorities decided to separate the activities of the banking sector from the securities industry and trust operations. Based on this principle, the financial system is still anchored on the four original pillars, i.e. chartered banks, insurance companies, trust companies and investment dealers. Credit unions and local credit cooperatives, often dubbed the fifth pillar, offer many communities quasi-banking services. They encompass over 3 700 institutions in Canada, of which 1 349 are located in Québec. Other financial services are available through pension funds, mutual funds, closed-end investment funds, finance companies, mortgage companies and leasing companies.

In recent years, financial deregulation in the United States, Europe and Japan has unquestionably affected the reform movement instigated in Canada by the *Act respecting banks and banking*, which came into force June 1, 1992. Amendments to the legislation allow for the broadening of the powers of financial institutions, which will enable them to diversify their operations in order to become more competitive on domestic and international markets. The Act allows the banks to satisfy the wide-ranging needs of their customers and to use their capital in more varied ways through distinct legal entitites, depending on the sector involved. Québec and Ontario have already modified regulations pertaining to trust and insurance companies by broadening their powers to invest. However, this relaxation of the regulations is accompanied by prudential rules and the strengthening of the powers of regulatory bodies.

A) Characteristics of the Canadian financial system

In their capacity as financial intermediaries, institutions can transfer capital from depositors to investors and consumers whether or not the latter are in the same city, province or country.

---

75. SOCIÉTÉ D'AVOCATS DESJARDINS DUCHARME, *op. cit.*

76. Research reports prepared for the Economic Council of Canada, *Globalization and Canada's Financial Markets*, Ottawa, 1989, 194 pp. and *A Framework for Financial Regulation*, Ottawa, 1987, 146 pp.

A financial system is considered efficient if it satisfies the society's overall needs, at competitive prices. For this reason, the system must provide methods of payment geared to the needs of the economy and offer the full gamut of financial services.

Financial establishments, including banks, conduct myriad operations with such efficiency that Canada's banking system is regularly cited as one of the most efficient systems in the world. Computerization has made possible the introduction of new services and the enhancement of existing systems. For example, in 1990, the Clearing House processed over 2 billion payment instruments worth a total of $17 457 billion.[77] Under the Canadian cheque clearing system, a cheque drawn on a branch in one province and cashed in a branch of another bank in a different province can be debited to the issuer's account within only 24 hours.

Canada's relatively small economy is another important consideration, as it encourages financial institutions to turn to international markets in order to diversify their sources of funds and their investments. Like Québec, Canada relies heavily on foreign capital. In 1986, Canada's GDP was one-tenth that of the United States, but it borrowed US$24 billion on international markets, while the United States borrowed only US$56 billion.

The international operations of Canadian banking institutions are an undeniable advantage for Québec and Canadian businesses, which can more readily obtain foreign capital to cover their day-to-day operations and to finance capital expenditures. They also benefit from a network of contacts that often facilitates their transactions on international markets.

The main groups of financial institutions in Canada

Chartered banks are the biggest group of financial institutions in Canada; in the fourth quarter of 1990, their assets totalled $610 billion.[78] The seven Canadian chartered banks maintain roughly 7 000 branches across the country. They also have subsidiaries and offices in many countries. The 59 Canadian banks that are subsidiaries of foreign banks have few branches in Canada. In December 1988, only 10 of these banks maintained more than four branches and 19 of them did not maintain premises other than their head offices in Canada.

---

77. Canadian Bankers Association, *Bank Facts 1991*, p. 5.

78. *Bank of Canada Review*, Ottawa, December 1991, Table C5, pp. S36-S37.

With the coming into force of the Canada-United States Free Trade Agreement, American-owned banks enjoy special treatment in relation to that accorded other Canadian subsidiaries of foreign banks. Unlike the latter, Canadian subsidiaries of American banks may establish branches in Canada, without restriction. Moreover, the FTA does not limit the percentage of the banks' total assets that may be owned by the subsidiaries.

Members of the Mouvement Desjardins, the *caisses populaires*, the *caisses d'économie* and their federations had assets totalling $51.6 billion as of December 31, 1991, including $2.6 billion in assets in credit unions and federations outside Québec affiliated with the Confédération des caisses Desjardins as auxiliary members. The network of services, including federations in Ontario, Manitoba and New Brunswick, serve over 5 million members.

However, insurance companies rank second in terms of their assets. They invest the capital they collect in mortgage loans, shares and government and corporate bonds.[79] Trust companies, the third biggest group, also make personal and commercial loans, although they are the only institutions that may offer trust services. In 1987, they maintained 1 500 branches, fewer than the chartered banks, and their activities abroad are limited. Brokerage firms act above all as financial market intermediaries. They organize the direct sale of securities issued by governments and corporations seeking financing and ensure the efficient operation of a secondary market for such securities.

Under the Constitution, only banks are subject to the exclusive jurisdiction of the federal government, while jurisdiction over the other financial institutions is shared by Ottawa and the provinces. When the latter institutions operate in more than one province, they must comply with overlapping legislation.

B) Accession to sovereignty

Were it to accede to sovereignty, Québec would exercise complete jurisdiction over financial institutions operating in the new State. This

---

79. Chapter 17 of the Canada-United States Free Trade Agreement stipulates that insurance companies incorporated under the statutes of the two parties must receive national treatment. See SOCIÉTÉ D'AVOCATS DESJARDINS DUCHARME, *op. cit.*, pp. 115 *et seq.*

situation would compel it to elaborate a legislative framework governing banks and to amend legislation respecting other financial institutions.

Two special problems would arise in the banking sector. Under existing legislation, a bank must maintain a permanent head office in Canada. The Royal Bank, the National Bank and the Bank of Montreal have head offices in Québec and could be obliged to open another head office in Canada, or move the head office, depending on the banking legislation prevailing in Canada and Québec. The second problem concerns the level of foreign control. At present, rules of ownership applicable to non-residents significantly curtail the percentage of the shares of a Canadian chartered bank that foreigners may own. Were Québec to attain sovereignty, these rules would have to be adapted to the new situation.

Despite its exclusive jurisdiction, Québec should also take into account the obligations stipulated in the international treaties to which it wishes to subscribe. For example, the Canada-United States Free Trade Agreement and the proposed General Agreement on Trade in Services, now being negotiated under the Uruguay Round, contain sections dealing specifically with financial institutions.

Similarly, given the importance and level of integration of the existing financial system, it is likely that the parties would wish to mitigate uncertainty and the fluctuations that would affect their respective markets and preserve reciprocal advantages by avoiding a rupture in the existing system. To this end, any agreement on maintaining the Québec-Canada economic space and monetary system would have to contain special provisions to ensure the cohesiveness of the financial system.

The high degree of integration of the banking sector warrants special attention. To enable the banks to pursue their operations in a harmonious manner, following the example of the European Community, the two countries could adopt the principle of mutual recognition. This principle means that the regulatory authorities in the host State would accept the analysis of the solvency and corporate structure of an institution prepared by the authorities of the State of origin. Thus, a bank authorized by Canada to do business in Canada could establish branches and provide services in Québec, as could a Québec bank in Canada. This principle also assumes that a financial product authorized by the State of origin could circulate freely within the host State. However, the adoption of this principle does not prevent the parties from making exceptions in the interests of public order and consumer protection, or to discourage fraud.

In order for mutual recognition to work, the States concerned must extensively harmonize their banking legislation and regulations. Consequently, Québec would not be able to adopt legislation that strays significantly from Canadian banking legislation.

As for the Caisses populaires Desjardins, which have been incorporated pursuant to Québec legislation and engage in limited activities outside Québec, they would scarcely be affected by Québec's accession to sovereignty. The services now offered by the Caisse centrale Desjardins and the federations of credit unions in Manitoba, Ontario and New Brunswick could be maintained. The same is true of the border agreement that allows members of the caisses populaires in the Hull region affiliated with the Mouvement Desjardins, and members of credit unions in the Ottawa region affiliated with their Ontario federation to effect banking operations at the credit union of their choice.

The authors of the study prepared for the Committee pointed out that, if the two countries failed to agree on the adoption of the principle of mutual recognition, Québec could recognize Canadian banks but seek to maintain some degree of control over their operations in Québec. Such control could not be stricter than that excercised by Canada over Québec banks operating within its borders. The parties should nonetheless relax the rules governing foreign banks and share ownership by non-residents to avoid overburdening the financial system.

Adopting the principle of mutual recognition would broaden access by other financial institutions to financial markets. Moreover, the principle would help stabilize the ability of such institutions to carry on business as harmoniously as possible outside their jurisdiction of origin. This proposal would unquestionably rally the financial institutions concerned, which would generally have to comply solely with the legislation of the State of origin.

However, the existing system favours Ontario, which has the biggest financial market. Because the institutions that do business there must in any event apply the rules set by the province, Ontario might respond unenthusiastically to a proposal concerning mutual recognition. Under the circumstances, a sovereign Québec would then have to resort to the principle of national treatment, as is now the case. In the latter instance, Québec would treat Canadian institutions on the same footing as its own institutions.

Over the years, Québec has established various regulatory bodies in order to protect depositors and ensure compliance with its legislation. This role is fulfilled by the Régie de l'assurance-dépôts du Québec and the Inspector General of Financial Institutions. Were Québec to achieve sovereignty, it would not have to set up such agencies from scratch. The Régie would continue to insure deposits made in Québec, and the Inspector General to monitor the operations of Québec financial institutions. The Québec Inspector General would, perforce, collaborate closely with his Canadian counterpart in the event the parties adopt the principle of mutual recognition.

The approach the study proposed with regard to all financial institutions would make it possible to preserve intact the features of the Canadian banking system and further relax the regulatory framework governing other types of financial institutions.

5.3.6 Economic implications

Evaluating the implications of Québec's accession to sovereignty with regard to the main economic variables poses a daunting challenge, if only in terms of the scope and complexity of such an institutional change, not to mention the technical difficulties inherent in the operation, bearing in mind the limitations of economics in this respect. For this reason, the Committee examined with circumspection the studies brought to its attention. It also heard testimony from Professors John McCallum and Pierre Fortin and economist Patrick Grady on the economic implications of Québec's possible accession to sovereignty. To shed light on the matter, the Committee asked Marcel G. Dagenais to prepare a study, entitled *L'interprétation des analyses portant sur les impacts économiques de l'accession du Québec à la souveraineté* and a study by Daniel Racette entitled *Quelques réflexions sur le problème d'ajustement du déficit du compte courant d'un Québec souverain*. It also referred to the work of Rodrigue Tremblay and Mario Polèse.

A) Interpretation of economic analyses

In order to correctly interpret the findings of economic analyses, it is necessary to first specify the hypotheses based implicitly or explicitly on the leading variables.

Furthermore, in order to establish a reference base which allows for the comparison of different scenarios, it is also important to ascertain how the

Québec economy would have developed without the introduction of the changes whose impact is to be measured. For example, the anticipated budgetary context is a relevant factor to take into account. Account must also be taken of the fact that an institutional change would produce different results were it to occur during a period of economic growth instead of a prolonged recession.

Changes in exogenous variables that are independent of constitutional issues, such as the North American economic situation or the new economic arrangements resulting from discussions pursued in conjunction with GATT and the FTA, can significantly affect the findings of various impact analyses. Moreover, economists can envision changes in these variables in different ways; the forecasts referred to can vary substantially from one analysis to another.

An additional, imposing problem arises when an attempt is made to delineate a sovereignty scenario. For example, how can account be taken of the nature of the climate surrounding negotiations and the repercussions of such a climate on the outcome of possible negotiations? Would Québec establish a common market, a customs union or a free-trade zone with its trading partners? These concerns are not so much economic as political in nature. Under the circumstances, an economist can only contemplate an array of credible scenarios.

Major institutional changes usually engender structural changes in the economy. The formulation of hypotheses concerning the behaviour of economic agents in light of such changes is crucial, given its decisive impact on the results obtained. Furthermore, the analysis must assess the effect of business and consumer attitudes on day-to-day decisions, for example in terms of savings, consumption and investment.

Two broad approaches were adopted to evaluate the economic impact of institutional changes resulting from Québec's accession to sovereignty, i.e. partial analyses and global models.

Partial analyses usually focus on a single economic sector or a series of topics. Under this approach, it is impossible to take into account interaction between the main economic variables. However, the approach does make it possible to better scrutinize questions pertaining to particular sectors and leaves more room for expert judgments. Global models simultaneously encompass changes in different sectors or the behaviour of groups of economic agents and the links between the main economic variables.

B) Anticipated effects

The possible impact on its economy of Québec's accession to sovereignty can be divided into two main categories, i.e. temporary effects, associated with a period of uncertainty, and structural or durable effects, engendered by institutional changes.

Temporary effects would be most apparent in interest rates, movements of capital and investment decisions, depending on the climate of dubiety that could accompany any major change in the existing constitutional order.

The anticipated changes in terms of structural effects are much harder to analyse and quantify. One change that should be considered from the outset is the possible rupture in the current economic space, at least in terms of its essential elements. Were it not possible to maintain the free circulation of goods, services, persons and capital, trade and the markets of Québec and Canadian firms would undergo major adjustments. The repatriation to Québec of all federal government spending and income would also have long-term effects. Other changes may occur, such as migrations, the relocation of head offices and so on.

a) Impact of incertitude

While the vast majority of experts consulted assumed the maintenance of a common market and the use of a common currency, they stated that the economy would have to bear costs engendered by incertitude, at least in the short run, which the experts call transitional costs.

Interest rates

Most of the experts believe that the financial markets would react negatively to any real or apparent increase in uncertainty sparked by political change. Such a reaction would lead to an increase in the risk premium applied to Québec and, to a lesser extent, to Canada, on public borrowings. In turn, the premium would affect interest rates and the exchange rate on the Canadian dollar. Higher risk premiums adversely affect the economy as they nudge up real interest rates, increase the cost of investments and curtail consumer spending. For example, according to an evaluation prepared by the Economic Council of Canada, a permanent increase of one percentage point in real interest rates would

mean a long-term loss of 1.5 percent of GDP.[80] A temporary increase in these rates would obviously have a less pronounced effect on the economy.

A number of experts think that the increase in real interest rates cannot be evaluated in isolation as such an upturn could be accompanied by a drop in the value of the Canadian dollar, to the extent that monetary authorities accept such a drop. By encouraging exports, a drop in the value of the dollar would offset, at least in the short run, the adverse effects of higher interest rates. For example, DRI (Data Resources)[81] estimates that an increase of three percentage points in interest rates accompanied by a 3.9 cent U.S. drop in the value of the Canadian dollar could lower the Québec GDP by 0.35 percent in the short run, and the Canadian GDP by 0.42 percent, while a similar increase in interest rates accompanied by an increase in the value of the Canadian dollar in conjunction with anti-inflation measures would trim GDP by 1.7 percent in the short term. These results clearly reveal the countervailing effect that a drop in the value of the Canadian dollar could have.

- *Investment decisions and movements of capital*

Numerous investors are leery of a country that is undergoing a period of political or economic unrest. Unless Québec, Canada and the United States arrive very quickly at an agreement on maintaining the existing economic spaces, Québec's accession to sovereignty will arouse uncertainty, especially with regard to access to the Canadian and American markets. Under the circumstances, some firms might decide to postpone investment projects, resulting in the abandonment of projects were the uncertainty to persist. Other companies might decide to move their facilities or expand their premises abroad if they thought that doing so would make them more competitive and guarantee outlets for their products.

Depending on the political climate that prevailed during the transitional period, investors and businesses, anticipating the devaluation of the Canadian dollar, might seek to protect their assets by converting them into foreign currencies. It is impossible to gauge the extent of such a trend as it would depend on the perception economic agents have of the overall political situation. The attitude of the federal and Québec governments

---

80. ECONOMIC COUNCIL OF CANADA, *op. cit.*, 1991, p. 85.

81. DRI/MCGRAW-HILL, *Canadian Market Outlook*, Toronto, Summer 1991, p. 16.

to maintaining the monetary union would be a key issue. While such movements can be detrimental to the economy, economist Pierre Fortin[82] surmises that their impact must be carefully weighed insofar as capital is highly mobile and may return quickly once uncertainty abates. Losses of capital would ultimately be less economically deleterious than the loss of investment.

Québec and Canada would have at their disposal various means of intervening to calm the fears of the financial markets and the public, e.g. by offering assurances that they would preserve economic freedoms, streamlining public finances, concluding commercial and monetary agreements, and agreeing as quickly as possible on the division of the debt.[83] However, the efficient use of these means would be affected by the climate that prevails during negotiations between the two parties.

b) Structural effects

- *Economic relations between Québec and Canada*

The Bélanger-Campeau Commission concluded that, should Québec become sovereign, it would be advisable to preserve the Canadian economic space. In essence, this would mean using a common currency, maintaining the free movement of goods, services, workers and capital between Québec and Canada, and displaying a willingness to continue to harmonize certain existing policies or regulations, especially in the financial sector. Under the circumstances, according to a majority of experts, it is reasonable to expect minimal structural impact on the economy.

However, other studies were predicated on the assumption that secession would foment acrimony and lead to the imposition of tariff barriers on trade between the two countries. DRI submitted a study in which it examined such a possibility by assuming that the parties would apply tariffs similar to those prevailing between the United States and Canada prior to the adoption of the Free Trade Agreement. According to the study, the imposition of such barriers would lead to a drop on the order of 2.8 percent in Québec GDP, and a 1.0 percent drop in GDP in the rest

---

82. Pierre FORTIN, *Les conséquences économiques de la souveraineté du Québec : analyse exploratoire*, Montréal, 1991, p. 14.

83. *Ibid*, p. 13.

of Canada.[84] Expressed in 1990 dollars, the economic loss would total some $4.5 billion in Québec and $5.2 billion in Canada. These figures show that the Québec and Canadian economies are highly interdependent and that both countries would have a lot to lose under the circumstances.

Other experts have examined the same question from a sectorial standpoint. The most vulnerable sectors appear to be agriculture, the automobile industry, textiles and clothing. The imposition of tariff barriers, in addition to the already foreseeable adjustments under GATT and the FTA, could cause major upheavals in these sectors.[85]

- *Federal government spending in Québec*

In 1990, the federal government spent nearly $5.8 billion on goods and services in Québec. Moreover, transfers to individuals, buisnesses and the Gouvernement du Québec totalled $19.5 billion.[86] While the Gouvernement du Québec could assume the activities or programs formerly under federal responsibility following Québec's accession to sovereignty, some experts feel that repatriating all revenues and expenditures would have a negative net effect on the Québec economy. Opinion is highly divided, notably because of the plethora of assumptions needed to make such assessments and because the available databases are incomplete.

According to Rodrigue Tremblay, the consolidation in 1990 of the federal and provincial budgets, based on data pertaining to the provincial economic accounts, [TRANSLATION] "would have added $632 million to the budgetary deficit borne by Québec taxpayers",[87] or 0.4 percent of GDP, assuming that Québec would assume a portion of the federal deficit equivalent to its contribution to federal tax receipts. Patrick Grady estimates Québec's tax gain under the federal system at roughly 2.0 percent of its GDP.[88]

---

84. DRI/McGRAW-HILL, *op. cit.*, p. 14.

85. See section 5.3.2, "*Economic and commercial relations*".

86. STATISTICS CANADA, *Provincial Economic Accounts*, Cat. 13-213, 1991.

87. Rodrigue TREMBLAY, *L'impact fiscal statique et dynamique de l'accession du Québec au statut de pays souverain*, Montréal: Université de Montréal, February 1992, p. 7.

88. Patrick M. GRADY, *The Economic Consequences of Québec Sovereignty*, Vancouver, Fraser Institute, p. 160.

These conclusions are the result of a purely accounting analysis that does not consider indirect impact on the economy. Such effects could materialize, through a different level or makeup of spending in Québec, or by the indirect effect of a higher tax burden that would seek to offset the loss in Québec's tax gain under the Canadian federation.

In its latest annual report, the Economic Council of Canada examines the change in the well-being of Quebecers resulting from the reorganization of the existing fiscal structure, using a model that takes into account indirect impact on the economy and the restructuring that would follow this reorganization. According to the ECC, were the federal government to withdraw, the combined direct and indirect impact, once all economic adjustments were effected, would result in a drop of between 1.4 percent and 3.5 percent in Québec GDP.[89] However, such an outcome is closely tied to the hypotheses adopted with regard to the share of federal expenditures and debt that Québec would have to assume, the rate of financing the debt, foreseeable changes in federal transfers, and so on.

DRI estimated that the decrease in Québec GDP resulting from the reorganization of the Québec and federal budgets would be roughly 1.4 percent, bearing in mind, notably, the possible reduction in the federal deficit. According to some hypotheses, the impact could reach 2.2 percent.[90]

From the foregoing discussion it can be concluded that the various evaluations diverge appreciably with regard to the method of analysis employed and the scope of the phenomenon. The most critical hypotheses centre on the share of spending and the federal debt that Québec would have to assume and on anticipated changes in federal transfers.

- *Head offices*

In the event that Québec accedes to sovereignty, a number of experts speculate that head offices might move out of Québec. This special concern can be explained by the importance and scope of the decisions made in head offices, and the economic spinoff from typical operations conducted therein, such as research and development, marketing and advertising.

---

89. ECONOMIC COUNCIL OF CANADA, *op. cit.*, 1991, p. 91 and p. 117.

90. DRI/MCGRAW-HILL, *op. cit.*, p. 14.

Firms under Canadian control outside Québec would be the most likely to reorganize their administrative functions or move their head offices. The same is true of financial institutions operating under federal charters, the subsidiaries of foreign businesses and Crown corporations. The head offices of companies under Québec control, the most numerous of the head offices located in Montréal, would be less likely to undergo significant organizational changes. However, they might be obliged to create subsidiaries outside Québec should Québec and Canada fail to agree on facilitating the operation of head offices in either country.[91] However, other firms that maintain head offices outside Québec might, by the same token, decide to set up a regional head office in Québec.

While the experts concur on the categories of enterprises likely to reorganize the administrative functions of their head offices, opinion is divided on the magnitude of the anticipated problem. John McCallum[92] and Patrick Grady[93] believe that Québec's accession to sovereignty would cause significant institutional reorganizations even though some firms have already moved their head offices from Montréal to Toronto. Mario Polèse noted that for at least the past 20 years, companies have reviewed the location of their administrative functions in light of the changing sociopolitical and linguistic situation in Québec.[94] He added that were Québec and Canada to agree on maintaining the free circulation of persons and capital, were they to negotiate a common right of incorporation, and were Québec to maintain a competitive taxation system and adopt language legislation that minimizes adverse effects on the companies concerned, the net additional impact of sovereignty on head office jobs would be limited.

- *Effect of migration*

An analysis of migration reveals that the English-speaking population of Québec is already highly mobile. Experts appearing before the Committee alluded to the likely departure of some non-French-speakers were Québec to accede to sovereignty. Gary Caldwell[95] believes that 10 percent of the

---

91. Mario POLÈSE, *La souveraineté et les emplois de siège social au Québec*, Montréal, April 1992, p. 5.

92. John MCCALLUM and Chris GREEN, *op. cit.*, 1991, p. 29.

93. Patrick M. GRADY, *op. cit.*, p. 156.

94. Mario POLÈSE, "Analytical Elements of a Counter-Scenario" in John MCCALLUM and Chris GREEN, *op. cit.*, pp. 82-83.

95. Gary CALDWELL, *L'anglo-Québec et la souveraineté de la Couronne québécoise*, Québec, April 1992, p. 4.

English-speaking population would leave a sovereign Québec over a 10-year period. According to John McCallum[96], 2.7 percent of the Québec population would emigrate during the first three years. The experts who attempted to assess the impact of emigration on the Québec economy speculated that these departures would result in a drop of between 0.1 percent and 1.0 percent in Québec GDP.

Experts such as Pierre Fortin, Mario Polèse and Rodrigue Tremblay have pointed out that this phenomenon would be more limited in scope than during the 1970s, especially as several major Canadian firms that could leave Montréal have already done so over the past 25 years.[97]

To counteract a possible net migration of residents between Québec and the rest of Canada, in particular among English-speakers, Mario Polèse suggested that agreements be concluded to guarantee the free movement of persons between the two countries in order to protect minority language rights or to allow for dual citizenship. Adopting this approach would alleviate the burden of making immediate decisions and would probably reduce the number of departures. The legal aspects of this question are examined in greater detail in the chapter dealing with nationality.

C) *The economic cost of the constitutional* status quo

If the economic effects of a change in constitutional status are to be accurately assessed, it is essential to be able to compare such costs with those inherent in the *status quo*. As a number of experts have noted, constitutional uncertainty is impeding efficiency, thus imposing a burden on the entire economy and, in particular, the economy of the Montréal region. Moreover, until the matter is settled to the satisfaction of the parties concerned, the constitutional debate will continue to waste resources in Québec and Canada.[98]

Those studies that compare the economic situation under sovereignty to that under the *status quo* are usually predicated on the assumption that the conditions now prevailing would not change were Québec to remain in

---

96. John McCALLUM and Chris GREEN, *op. cit.*, pp. 32 and 40.

97. Pierre FORTIN, 1991, *op. cit.*, p. 6; Rodrigue TREMBLAY, *op. cit.*, p. 22; Mario POLÈSE, *op. cit.*, p. 82.

98. CHAMBRE DE COMMERCE DU QUÉBEC, *L'avenir politique et constitutionnel du Québec : sa dimension économique*, Montréal, November 1990, p. 10.

Confederation. Other economists do not deem the *status quo* to be the most plausible scenario on which to base the analysis, given that political, economic and budgetary considerations are making change inevitable. For example, the gradual, foreseeable reduction in federal transfers covering education, health care and social aid under Established Programs Financing and the Canada Assistance Plan will over time weaken the federal government's role[99], thus indirectly reducing the net benefits that Québec might derive therefrom.

D) Dynamic gains

In contradistinction to the anticipated costs, a number of experts feel that Québec's accession to sovereignty would lead to greater solidarity and broader economic and social cohesiveness. Québec could enhance its ability to adapt to change by relying on vocational training more closely geared to its needs, by emphasizing research and development, and by accelerating the conversion of declining industrial sectors. Moreover, dynamic gains might result from the emergence of a new social contract between the government, business and the workers, which could enable the Québec economy to better meet the challenges facing it. "Although it is difficult to generalize in these matters, dynamic gains occuring in this context are likely to be positive and should therefore be taken into account in any assessment of the sovereignty-association scenario."[100] Rodrigue Tremblay noted that [TRANSLATION] "dynamic economic and social gains should offset possible economic losses originating in private-sector markets."[101] However, it should be noted that such losses would be short term, while the dynamic gains might only appear over the medium and long terms.

Several experts stated that Québec sovereignty might engender other medium- and long-term benefits, particularly in terms of controlling spending and government debt, the cohesiveness and effectiveness of Gouvernement du Québec policies, and the elimination of overlapping jurisdiction.

As was the case with regard to the cost of the *status quo*, the experts did not present figures pertaining to dynamic gains.

---

99. ECONOMIC COUNCIL OF CANADA, *op. cit.*, 1991, p. 84.

100. *Ibid.*, p. 90.

101. Rodrigue TREMBLAY, *op. cit.*, 1992, p. 23.

E) Overall impact on GDP and employment

To properly ascertain the overall impact of Québec's accession to sovereignty on employment and GDP, it must be established whether institutional changes would only affect government revenues and expenditures or whether the changes would affect the economy itself. Such impact would be entirely different if the common market, monetary union and financial markets were affected.

a) Short-term impact

Assuming that the basic features of the existing economic space were maintained, the main short-term impact would be felt in terms of fluctuating interest rates and exchange rates, movements of capital and investment decisions. Mention should also be made of the direct and indirect effect on the economy of recovering federal government revenues and expenditures, changes in trade flows with the other provinces and, to a lesser extent, the relocation of head offices and the net migration of Québec residents.

According to Rodrigue Tremblay, it cannot be concluded with certainty that Québec's accession to sovereignty would lead to an increase or decrease in the unemployment rate, as positive and negative factors would probably neutralize each other. However, because of the consolidation in Québec City of public budgets and policies, the expert believes that the unemployment rate would be more likely to drop than to rise, especially over the medium and long run.

Economists John McCallum and Chris Green surmise that uncertainty engendered by a major constitutional change, the decline in vulnerable sectors and the net migration of Québec residents would largely affect the Québec economy and reduce the room to manoeuvre of the government of a sovereign Québec. Moreover, they estimate that the unemployment rate could rise one percentage point during the first year and two percentage points over the succeeding two years, equivalent to a negative effect of roughly 3 percent on GDP.

Economist Pierre Fortin is of the opinion that sovereignty could spark a short-term economic slowdown attributable to the risk premium on interest rates, the effect of uncertainty on corporate investment decisions, the weakening of the Outaouais economy, and the sectorial consequences of changing existing commercial policies. He estimated at roughly one percentage point the short-term effect on the unemployment rate.

According to the Economic Council of Canada, the direct and indirect impact of transferring responsibility for government spending and debt would mean that the GDP of a sovereign Québec would drop by between 1.4 percent and 3.5 percent once all the other economic changes had occurred. To these disruptions would be added those tied to transitional costs as such and changes in the operation of the economic union. The ECC acknowledged that long-term dynamic and efficiency gains might also accrue.

Other authors have examined the effect of Québec's accession to sovereignty predicated on the assumption that the economic space would be disrupted. According to Patrick Grady, Québec GDP could, in the short term, drop by 10 percent, although over the long term it could recover to 5 percent. The losses would arise, among other things, because of the crisis in confidence resulting from political change, the impact of repatriating federal government revenues and expenditures, and foreseeable adjustments in trade with Canada.

Experts from DRI examined the impact of the imposition of a risk premium on interest rates, net emigration and the elimination of federal transfers. In the short term, these factors would reduce GDP by nearly 2 percent, within a lower and upper limit of 1.4 percent and 4.2 percent. The imposition of tariff barriers in the wake of the breakup of the common market could further reduce Québec GDP by 2.8 percent. Bearing in mind the other factors already considered, the total impact on the Québec economy would be 4.8 percent and, in the worst-case scenario, could reach 7.0 percent.

b) Long-term impact

Opinion is less divided on sovereignty's long-term effect on the Québec economy. Some of the experts maintain that the long-term impact would be less significant than short-term repercussions. Other experts share the opinion that, over the long run, sovereignty would scarcely affect Quebecers' standard of living, or having a slighty positive effect on it.[102] Once uncertainty had dissipated, the Québec economy would regain its normal rate of growth, or perhaps attain an even higher rate,[103] provided

---

102. Pierre FORTIN, *op. cit.*, p. 9; Rodrigue TREMBLAY, *op. cit.*, 1992, p. 22.

103. François VAILLANCOURT, *Une réflexion critique*, drawn from John MCCALLUM and Chris GREEN, *op. cit.*, p. 94.

that the trade ties linking Québec and the rest of North America are maintained.

John McCallum and Chris Green surmise that the initial shock the Québec economy would sustain might overwhelm its ability to recover. "This would involve a circular self-reinforcing process of higher taxes, lower investment and rising out-migration of capital [...]."[104] They also acknowledge that some factors might potentially act as a counterweight and produce long-term benefits in the wake of Québec sovereignty. Moreover, they note that Québec could experience a fairly protracted period of decline.

F) Impact on Canada

A number of the transitional shocks that Québec might experience could also affect Canada, especially risk premiums on interest rates, flagging investor confidence and a weaker dollar. In the short term, the main benefit to Canada might be a slight improvement in public finances resulting from the reduction in federal transfers to Québec. In the opinion of the experts, Québec sovereignty would have a negligible impact on Canada if the essential features of the economic union were preserved.

However, the experts do feel that Québec's main trading partners, Ontario and the Maritimes, would suffer were the free circulation of goods, services, manpower and capital to be halted. Canada might lose some of the influence it exercises on the international scene as its participation in the G7 could be called into question. Were the common market disrupted, the short-term impact on the rest of Canada might vary between 1 percent and 3 percent of GDP.[105] Such costs would result from dwindling confidence in the Canadian economy, higher interest rates and the possible imposition of tariff barriers between Québec and Canada.

Several experts focused on the risks inherent in dismantling Canada, a possibility that would adversely affect Québec and Canada because of the considerable uncertainty it would spawn and the disorder it would unleash. As Gordon Ritchie has noted, [TRANSLATION] "it must be acknowledged that before we can negotiate together to reconstitute the economic relationships between the partners, the rest of Canada will first

---

104. John McCALLUM and Chris GREEN, *op. cit.*, p. 64.

105. Patrick M. GRADY, *op. cit.*, p. 161; DRI/McGRAW-HILL, *op. cit.*, p. 14.

have to reconstitute itself."[106] If such were the case, both parties would sustain extremely high transitional costs.

G) Conclusion

Most of the studies examined by the Committee conclude that Québec's accession to sovereignty would adversely affect the Québec economy, although to what extent would depend by and large on the prevailing economic context, the nature of the institutional arrangements made with Canada, and the measures adopted to dispel uncertainty. Bearing in mind the foregoing factors, the most likely forecasts indicate a short-term drop in GDP of 1.5 percent to 4.0 percent. These forecasts are predicated on the assumption that a common market exists between the two countries and that they use a common currency.

Part of the impact would be temporary and would disappear once uncertainty surrounding the transitional period dissipated.

Otherwise, Québec's accession to sovereignty would result in a more permanent loss of GDP or revenue, recovery from which would demand accelerated medium-term growth in the Québec economy. This underscores the importance of arguments concerning the possibility of greater economic and social cohesiveness and dynamic gains.

However, a rancorous atmosphere, which would exacerbate incertitude, would slow down negotiations and lead to economic arrangements that are less satisfactory than the existing common market, and produce a greater negative shock, whose structural ramifications would be fairly substantial. Under the circumstances, the impact on the Canadian economy, and especially the Ontario economy, would also be significant.

It should be pointed out that the foregoing studies come up against the limitations of economics when it is a question of evaluating the impact of a major institutional change such as Québec's accession to sovereignty.

---

106. Gordon RITCHIE, January 29, 1992 (CEAS-662).

5.4 *Public finances*

5.4.1 *Public finances in Québec and Canada*

Before we turn to the question of sharing the federal debt and the public finances of a sovereign Québec, it would be useful to briefly review the revenues and expenditures of the Canadian and Québec governments for the 1990-1991 fiscal year and their respective levels of indebtedness. Similarly, a cursory look at changes in the budgets of both governments since 1970 will put the 1990-1991 figures into perspective.

The Gouvernement du Québec's budgetary deficit rose from 0.6 percent of GDP in 1970-1971 to 4.8 percent in 1980-1981, when it peaked, then fell to 1.8 percent in 1990-1991. During the same period, Québec's total debt in relation to GDP increased markedly, from 11.0 percent in 1970-1971 to 20.3 percent in 1980-1981. It has levelled off at nearly 29 percent since 1985-1986. As of March 31, 1990, total debt reached 28.1 percent of Québec GDP.

A similar phenomenon occurred in Ottawa during the same period. Canada's budgetary deficit as a proportion of GDP climbed from 1.1 percent in 1970-1971 to a peak of 8.7 percent in 1984-1985, then fell back to 4.6 percent in 1990-1991. Over the past 20 years, total federal government debt in relation to GDP decreased from 43.9 percent in 1970-1971 to 35.6 percent in 1976-1977, but shot upward in subsequent years, reaching 61.3 percent as of March 31, 1990.

In 1990-1991, Québec budgetary revenue totalled $33.0 billion, while expenditure totalled $35.8 billion, resulting in a $2.8 billion deficit. Bearing in mind the surplus recorded in non-budgetary operations, net borrowings on financial markets reached $1.5 billion, or 1 percent of GDP. As of March 31, 1990, Québec's debt totalled $42.0 billion.

The same year, federal governn nt budgetary revenue totalled $119.4 billion, compared with expenditure of $150.0 billion, resulting in a $30.6 billion deficit. Ottawa's net borrowings on financial markets came to $24.5 billion, or 3.7 percent of Canadian GDP. As of March 31, 1990, the federal government's debt totalled $398.0 billion.[107]

---

107. Revised federal Department of Finance figures, March 1992.

Table 5.3

Summary of financial transactions, Québec and Canada 1990-1991

	Québec		Canada	
	Millions of dollars	% of GDP	Millions of dollars	% of GDP
Budgetary revenue	33 006.4	21.4	119 353	17.8
Budgetary expenditure	35 831.2	23.3	149 971	22.4
Budgetary deficit	2 824.8	1.8	30 618	4.6
Net financial requirements	1 482.1	1.0	24 538	3.7
Total debt as of March 31, 1990	42 019.4	28.1	398 036	61.3

Sources: Gouvernement du Québec, ministère des Finances, *1992-1993 Budget: Budget Speech and Additional Information*, 1992; Government of Canada, Minister of Finance, *Quarterly Economic Review, Special Report: Financial Indicators and Reference Tables*, March 1992; and Statistics Canada, *Provincial Economic Accounts*, Cat. 13-213.

A breakdown of federal government spending in 1990-1991 reveals that transfer payments to individuals, corporations and local governments were the biggest single budget item, accounting for 31.0 percent of such spending overall. The proportion of total spending redistributed to the provinces in the form of transfers reached 17.1 percent, while debt service accounted for 28.4 percent of the total. Operating expenses and capital expenditures accounted for 21.1 percent and 3.4 percent, respectively, of total expenditure.

5.4.2 Dividing the federal government's assets and debt

Were it to accede to sovereignty, Québec would have to reach an agreement with Canada on dividing the federal government's assets and debt. Moreover, the two countries would have to establish a procedure that enables Québec to finance its share of the federal debt. Given the importance of this question, the Committee examined a number of published reports on the matter, including those prepared by the

Commission on the Political and Constitutional Future of Québec.[108] It also commissioned a study by actuary Claude Lamonde, entitled *Les enjeux de la problématique du partage des actifs dans le cadre du partage de la dette advenant la souveraineté*. The Committee also heard the following experts: Malcolm Shaw, Geneviève Burdeau, Claude Lamonde, Daniel Desjardins and Claude Gendron. Pierre Fortin, John McCallum and Patrick Grady also broached the topic during their testimony before the Committee. The foregoing studies and testimony form the basis of this section.

A) Principles of international law

Under customary international law and because of the principle of territorial sovereignty, the property of the predecessor State in the secessionist State reverts to the latter, without compensation. This applies to immovable and movable property related to the predecessor State's operations in the territory, such as office equipment, military equipment and rolling stock. The same rule should apply to financial assets, such as debt and the taxes due to the predecessor State.

While international law is not as clear on this point, there appears to be no justification for circumventing the principle of territoriality with regard to the assets of government corporations. The movable and immovable property of such corporations located in the new State should be transferred to the latter. The assets of government corporations not located solely in the successor State should be distributed in proportion to the assets found in the successor State. In the event that assets are divided, the same rule would apply to the assets of the central bank. Such assets would be divided in proportion to the liabilities represented by the money supply in circulation in Québec.

In the case of movable property not related to the predecessor State's operations within the secessionist territory or assets located outside the predecessor State's territory, current trends in the practice of States lean toward the equitable distribution of such assets.

---

108. COMMISSION ON THE POLITICAL AND CONSTITUTIONAL FUTURE OF QUÉBEC, "Analyse pro forma des finances publiques dans l'hypothèse de la souveraineté du Québec", *op. cit.*, pp. 393 *et seq.*. This study, produced by the Secretariat of the Bélanger-Campeau Commission, was included in the documents appended to the final report, although the Commission did not express an opinion on the content of these documents.

Under international law, the successor State is not bound to share the debt of the predecessor State, as the former was not a party to borrowing contracts. However, economic imperatives have led new States to negotiate a division of the debt. The current trend is for such division to be equitable.

Theoretically, different factors might be taken into account when debt is divided, i.e. territory, population, ability to pay and so on. In order to avoid jeopardizing the viability of the two States once debt and assets have been divided, there is a tendency to take account of ability to pay. Some jurists have noted that, to ascertain the equitable share of the predecessor State's debt, account must be taken, in particular, of the property, rights and interests that are passed on to the successor State in relation to State debt, which has given rise to the principle of proportionality between the debt assumed by the successor State and the assets it receives from the predecessor State.

Experts agree that, from the standpoint of international law, the pensions of federal employees are an obligation incumbent on Canada toward its employees. Canada would continue to be responsible for the pensions unless agreement to the contrary were reached with Québec. However, to encourage equitable dividing, and bearing in mind the principle of territoriality, some experts suggest that the successor State should assume responsibility for the pensions of federal employees integrated into the Québec public service. Others advocate applying the same criterion concerning dividing as obtains for the general debt when responsibility for the pensions is divided.

B) Inventory and assessment of assets and liabilities

The state of the public finances of a sovereign Québec would, perforce, be affected by the size of its share of federal government debt. Under government accounting practices, the value of government assets is determined by the sum of financial assets,[109] non-financial assets, mainly immovable property and land, and the accumulated deficit, which represents the difference between liabilities and financial and non-financial assets. To draw up such a balance sheet, it is essential at the outset to inventory all assets, both financial and non-financial, evaluate them, then evaluate the entire range of federal government debt. However, all of the

---

109. Financial assets encompass loans, capital endowments and the advances of the government and government corporations, exchange operation accounts, accounts receivable, funds in transit and cash in hand.

experts concur that every source of data concerning the assessment of the government's assets is seriously flawed, particularly with regard to non-financial assets.

All of the experts agree that inventorying and evaluating non-financial assets would be a major stumbling block in terms of dividing the debt. Three reasons have been put forward. First, to the extent that the dividing of the debt would reflect the proportion of this asset attributable to each party, the higher the proportion, the bigger each party's share of the debt would be, which gives rise to conflicting interests. Second, only a detailed evaluation of all non-financial assets, regardless of their location, would make it possible to ascertain the precise portion that is located in Québec. As there is no market for the bulk of such assets, the evaluation would be arduous, prolonged and costly.

The federal government's consolidated liabilities[110] include *monetary liabilities* (bank notes in circulation and bank deposits) and *financial liabilities* (mainly debt that is not yet due held by third parties, such as long-term bonds, savings bonds and Treasury bills).

The experts usually separate the assets and liabilities of retirement plan accounts from the government's balance sheet, mainly because they are a possible liability and only entail disbursements at the time employees retire.

C) *Evaluation of the Commission on the Political and Constitutional Future of Québec (Bélanger-Campeau Commission)*

The Secretariat of the Bélanger-Campeau Commission[111] prepared the first detailed study on the breakdown of the federal government's assets and debt. All subsequent studies have used it as a reference point.

In this study, it is assumed that the share of federal debt due to third parties and that Québec would assume would be proportional to the province's share of overall federal assets. Thus, it is all of the factors

---

110. The federal government's consolidated liabilities are obtained by consolidating the balance sheet of the Bank of Canada and that of the federal government. See COMMISSION ON THE POLITICAL AND CONSTITUTIONAL FUTURE OF QUÉBEC, *op. cit.*, pp. 403-408.

111. COMMISSION ON THE POLITICAL AND CONSTITUTIONAL FUTURE OF QUÉBEC, *op. cit.*, pp. 393 *et seq.*

inherent in the succession of States that should be shared, not just the debt.

According to this study, Québec would inherit 3.8 percent of financial assets, 18.0 percent of non-financial assets and 22.8 percent of the accumulated deficit. Bearing in mind the relative weight of each element and excluding the retirement fund accounts, Québec would be entitled to 18.5 percent of total assets.

Table 5.4

Division of federal government assets (in millions of dollars)

	Value of assets on the succession balance sheet as of March 31, 1990	Québec's share	
		%	$
Financial assets	57 195	3.8	2 169
Non-financial assets	72 000	18.0	12 960
Accumulated deficit	200 394	22.8	45 690
TOTAL	329 589	18.5	60 819

Source : Commission on the Political and Constitutional Future of Québec, *op. cit.*, p. 427.

Based on the principle of the proportionality of assets and liabilities, because Québec would obtain 18.5 percent of total assets, it would also have to assume 18.5 percent of the liabilities recorded on the balance sheet. However, as the Bélanger-Campeau Commission study is predicated on the assumption of a de facto monetary union with Canada, without a division of the profits or assets of the Bank of Canada, Québec would not assume any portion of the Bank of Canada's monetary liabilities recorded on the federal government's consolidated balance sheet.

The approach adopted with respect to retirement plan accounts in the aforementioned study assumes that Québec's share of the liabilities of the accounts would be equivalent to the proportion of pension plan participants (contributors and beneficiaries) residing in Québec, estimated at 13.3 percent.

Québec's share of the federal government's total liabilities, i.e. debt that is not yet due, other liabilities and pensions, would thus be 17.5 percent. On this basis, Québec's share of the federal government's total liabilities, i.e. the debt, has been estimated at $66.3 billion.

Table 5.5

Division of the federal government's liabilities (in millions of dollars)

	Value of assets on the succession balance sheet as of March 31, 1990	Québec's share	
		% of liabilities	$
Monetary liabilities	22 486	Assumed by Québec economic agents	
Financial liabilities	307 103	18.5	56 814
Employee retirement plan accounts	70 997	13.3	9 456
TOTAL (excluding monetary liabilities)	378 100	17.5	66 270

Source : Commission on the Political and Constitutional Future of Québec, *op. cit.*, pp. 431 and 433.

With regard to methods of financing, the study indicates that the government of a sovereign Québec would have to assume the interest on the $66.3 billion debt, which would nonetheless remain an obligation on the part of the federal government toward third parties. The Gouvernement du Québec could gradually assume responsibility for obligations to third parties according to a timetable to be negotiated with the federal government.

The experts in international law consulted by the Committee confirmed that this method of division is compatible with international law pertaining to the matter.

D) Other approaches

Most of the experts who examined the question also acknowledged the principle of a division of liabilities based on the division of assets. However, numerous divergences were expressed, notably by economists, concerning the methods of applying this principle. Moreover, a number of experts did not take into account the fact that, in order to agree on the division of the debt, Québec and Canada would have to first agree on the method of dividing the assets, in order to ensure that the final outcome was fair.

From the outset, most of the experts mentioned that the first step should consist of the parties' agreeing on the equitable division of assets and liabilities. However, the principle can be applied in several ways. Three broad approaches were used, based on historic benefits, population, and the ability to pay.

If *historic benefits* are the yardstick applied, Québec's share of the federal debt should be equivalent to the province's net share of tax benefits over the past 30 years (33.5 percent).[112] Were this approach adopted, the federal debt would have to be divided between the poorest provinces which, according to most of the experts consulted, would be incompatible with the notion of equitable apportionment, not to mention the conceptual and technical problems the method raises.

Québec's share of Canada's population (25.4 percent) was adopted by some experts as a criterion for division, especially with respect to federal government assets and, in another instance, its liabilities. The main disadvantage of this criterion is that it precludes taking account of the parties' relative wealth, which may vary markedly from one province to the next. In terms of fairness, this criterion seems less relevant.

Most of the experts opted for a division based on the *ability to pay* because it best reflects the notion of equitable apportionment. According to various experts, the best indicator of Québec's ability to repay its debt should be the portion of federal government revenues collected in Québec in the coming years. Because this share is unknown, it was evaluated at 22.8 percent during the deliberations of the Bélanger-Campeau Commission, based on Québec's past contribution to federal taxes. Other indicators can also be used to ascertain the ability to pay, including,

---

112. Paul BOOTHE *et al.*, *Closing the Books*, Toronto, C.D. Howe Institute, December 1991, p. 43.

among other things, Québec's share of Canadian GDP (23.4 percent)[113] or fiscal capacity as defined under the equalization system (21.7 percent). Insofar as it is agreed that the successor State will assume responsibility for an equitable share of the debt, and to avoid penalizing third parties holding this debt, most of the experts felt that the criterion of the ability to pay was the most appropriate one under the circumstances. The best indicator would undoubtedly be past contributions to federal taxes or Québec's current fiscal capacity.

However, in practice, it would be impossible to transfer to Québec the same proportion of federal assets as its share of federal debt because the division of assets within Canadian territory in no way reflects each province's tax contribution. The discrepancy between the theoretical proportion to which Québec would be entitled and the assets located in its territory has led different experts to point to the utility of an *adjustment for assets apportionment*, as the majority has assumed that Québec owns in its territory a portion of federal assets lower than that to which it would be entitled according to the criterion of ability to pay. When it is applied, the principle of equitable apportionment would thus assume that the principle of an adjustment for assets apportionment also be recognized.

As for the matter of financial assets, the Bélanger-Campeau Commission specified that Québec would receive all of the property of Crown corporations which operate almost exclusively in Québec, that it would remain a shareholder in certain Crown corporations operating from coast to coast, and that it would divest itself of its share in all other such corporations.[114] Québec would renounce its share of other financial assets, such as gold reserves, thereby reducing its share of total assets.

This procedure, under which Québec would choose those federal assets that it wishes to keep, raised objections from certain experts as, *a priori*, it favours Québec's interests over those of Canada.

The Bélanger-Campeau Commission assumed that, in accordance with international law, Québec would receive as its share non-financial assets located in its territory. While several experts acknowledged the practical interest of this territorial approach, others expressed reservations about the ability to accurately evaluate such assets and, above all, the adjustment to

---

113. The experts used the figure 23.4 percent, based on preliminary data. Québec's share of Canadian GDP in 1990 was actually 22.9 percent.

114. COMMISSION ON THE POLITICAL AND CONSTITUTIONAL FUTURE OF QUÉBEC, *op. cit*, pp. 422-423.

be made were the outcome of such an evaluation to differ from the division proposed with respect to the debt. The latter group of experts preferred to apply a general division criterion to establish *a priori* what share of federal liabilities Québec should assume, although it may mean that subsequent negotiations allow for the inevitable adjustments concerning assets. However, most of the experts were ambiguous about what compensation Québec would receive were the evaluation conducted on a geographical basis to differ from the division otherwise proposed. A number of experts stressed that any evaluation of the value of non-financial federal assets will always be highly debatable.

Actuary Claude Lamonde presented to the Committee an evaluation of the federal government's assets based on a liquidation value as close as possible to market value.[115] On the basis of his analysis, the author estimates that such assets are worth $169 billion, compared with $129 billion, the figure advanced by the Secretariat of the Bélanger-Campeau Commission. Moreover, he estimates that federal assets located in Québec are worth $25 billion, equivalent to 15 percent of the total.

The author opines that Québec should be entitled to 28.4 percent ($48 billion) of federal asssets, equivalent to its historic share of the population of Canada, which would mean a $23-billion assets deficit. Because the author acknowledges the adjustment for assets apportionment, he maintains that this amount should be deducted from Québec's share of federal government liabilities. Bearing in mind the division of liabilities that the author proposes, Québec's total share of the debt would reach $52 billion.[116]

Were Québec to use Canadian currency without dividing the profits and assets of the Bank of Canada, it would not have to assume its share of monetary liabilities.[117] This possibility also raised objections in some quarters, notably because of the fact that, were Québec to subsequently

---

115. Claude LAMONDE, *Les enjeux de la problématique du partage des actifs dans le cadre du partage de la dette advenant la souveraineté*, Montréal, January 30, 1992, 36 pp.

116. The author calculated that Québec's share of the debt would total $43 billion, without taking into account debt pertaining to the retirement plans. On the latter point, Claude Lamonde considers the basis for division used by the secretariat of the Bélanger-Campeau Commission to be equitable. He therefore concurs that $9 billion should be added to the previously mentioned total which, in this expert's view, constitutes the total liabilities that Québec would have to assume.

117. COMMISSION ON THE POLITICAL AND CONSTITUTIONAL FUTURE OF QUÉBEC, pp. 428-432.

withdraw from the monetary union, Canada could wind up with a portion of the common debt unrecognized by Québec, but with a reduced monetary base to support it.

Major reservations were also expressed concerning the division of federal government employee retirement plans. Various experts pointed out that, in the past, public servants, and employees of Crown corporations, have offered services to all Canadians. As a result, Québec's responsibility could not be confined to public servants and retirees residing in its territory. Québec would not be legally bound by Canada's commitments with respect to the pensions of federal employees vested before the latter were integrated into the Québec public service. As is the case with the overall debt, it is reasonable to propose that Québec assume an equitable portion of the deficit in the predecessor State's retirement plans. The criterion of the place of residence of repatriated employees and retirees seems practical, provided it is part of a broad agreement based on the principle of equitable apportionment.

E) Evaluations of Québec's share of the federal debt

The experts who testified before the Committee formulated different hypotheses to assess the portion of the federal debt that Québec should assume. The discrepancies between the results they obtained are attributable to the choice of division criterion, differences in the assessment of financial and non-financial assets, whether or not the expert adopted the principle of an adjustment for assets apportionment, and the manner in which retirement accounts were dealt with.

The estimates of Québec's share of federal government debt presented to the Committee ranged from $52 billion to $102 billion (see Table 5.6).

If we take into account only those experts who used Québec's ability to pay as the basis for dividing federal government assets and liabilities, the evaluations range from $66 billion to $90 billion for the 1990-1991 fiscal year. This discrepancy is due primiarly to the use of an adjustment for assets apportionment, i.e. the $15 billion disparity between the upper and lower limits, and the different way in which the retirement plan accounts are dealt with ($7 billion discrepancy).

To correctly interpret these data, it must be remembered that, in the event that Québec assumed a $90-billion debt, it would also be entitled to the same proportion of federal assets. Thus, instead of receiving 3.8 percent of federal financial assets, as is the case were it to assume $66 billion in

debt, it would be entitled to 23.4 percent of such assets, worth an additional $11.2 billion. The additional assets would concomitantly reduce Québec's net indebtedness, i.e. gross debt less financial assets. Moreover, Québec could then divest itself of these additional assets, thereby reducing its debt. Compensation should be negotiated in respect of non-financial assets.

F) Methods of financing Québec's share of the federal debt

Were Québec to attain sovereignty, it is assumed that it would repatriate the collection of revenues that now go into the coffers of the federal government. This additional revenue would be used to offer services currently under federal responsibility and to cover debt service on Québec's share of the federal debt, which is financed at present through Ottawa's borrowings. Under international law, the Canadian government alone would be responsible for repaying this debt. Various experts have advocated two ways in which Québec could assume a share of federal debt. The first would consist of establishing a joint federal debt management agency when Québec acceded to sovereignty. If such were the case, each party would assume the portion of interest attributed to it under the division of the debt agreed upon. The second method assumes the gradual replacement of Québec's share of federal government borrowings, as the latter mature, by Gouvernement du Québec borrowings.

Given the size of the amounts in question and to minize the interest premiums that the markets might demand of Québec and Canada, most of the experts recommend that the debt be transferred in an orderly fashion between the two parties and that it be spread over a sufficiently long period that it does not run the risk of destabilizing existing markets.

It should be noted that over 40 percent of federal debt that is not yet due consists of negotiable bonds and another 40 percent, of Treasury bills. To finance its debt, the federal government has created a special market by obliging the institutions that manage RRSPs and retirement plans to invest 90 percent of their funds in Canadian securities that meet stringent requirements.[118] As Québec repatriated its debt, it would have to develop a similar market capable of absorbing the amounts in question without resorting unduly to external markets. To this end, Québec could

---

118. Claude LAMONDE, *op. cit.*, p. 33.

adopt legislation similar to federal legislation, or negotiate an agreement with Ottawa that would give the two governments special access to both markets to sell their securities.

Maintaining the Canadian dollar as the common currency would make it easier to finance the debt and eliminate the risks for lenders of exchange fluctuations that might result from the creation of a Québec currency.

Obviously, the outcome of these complex negotiations cannot be accurately forecast; they will be decisive for Québec and Canada. However, it seems reasonable to conclude that both parties will ultimately reach agreement, as the international financial reputations of Québec and Canada would be at stake, along with the quality of future relations between the two partners, and the size and period of application of the risk premium that the financial markets would impose on them.[119]

Table 5.6 summarizes the methods used and the results obtained in the following studies dealing with the matter:

- COMMISSION ON THE POLITICAL AND CONSTITUTIONAL FUTURE OF QUÉBEC, *Éléments d'analyse économique pertinents à la révision du statut politique et constitutionnel du Québec*, background paper No. 1, 1991, pp. 393-496;

- Claude LAMONDE, *Les enjeux et la problématique du partage des actifs dans le cadre du partage de la dette advenant la souveraineté*, presentation before the Committee to Examine Matters Relating to the Accession of Québec to Sovereignty, Montréal, January 1992, 36 pp.;

- Pierre FORTIN, *L'impact du passage à la souveraineté sur le déficit budgétaire du Québec*, Centre de recherche sur les politiques économiques, Université du Québec à Montréal, February 1992, 31 pp.;

- John MCCALLUM and Chris GREEN, *Parting as Friends: the Economic Consequences for Québec*, Toronto: C.D. Howe Institute, 1991, 124 pp.;

- Patrick GRADY, *The Economic Consequences of Quebec Sovereignty*, Vancouver: Fraser Institute, 168 pp.

---

119. Pierre FORTIN, *op. cit.*, p. 25.

Table 5.6

Summary of the division of assets and liabilities

	BÉLANGER-CAMPEAU	LAMONDE	FORTIN	MCCALLUM AND GREEN	GRADY
PREMISE	Québec assumes a portion of liabilities equal to its share of assets	Proposes different criteria for dividing assets and liabilities	These authors propose an *a priori* criterion for dividing assets and liabilities. *A posteriori*, they call for an adjustment for assets apportionment following evaluation and negotiations		Proposes a criterion for division that he applies to all assets and liabilities : evaluation and negociations *a posteriori*
Division criterion used	Québec's future share of federal government revenues estimated according to past contribution, 22.8 percent	Assets : Québec's historic share of the population, 28.4 percent Liabilities : Québec's future share of federal government revenues, 20.0 percent	Québec's share of Canadian GDP, 23.4 percent	Québec's share of Canadian GDP, 23.4 percent	Québec's share of Canada's population, 25.4 percent
Financial assets	Québec chooses the assets of Crown corporations for which it would be wholly of partially responsible and relinquishes the balance of financial assets, 3.8 percent	Asset division criterion	Québec chooses the assets of Crown corporations for which it would be wholly or partially responsible and relinquishes the balance of financial assets, 3.8 percent	Division criterion	Division criterion
Non-financial assets	Assets located within Québec, 18.0 percent	Asset division criterion	Division criterion	Division criterion	Division criterion
Accumulated deficit	Division criterion		Division criterion	Division criterion	Division criterion
Monetary liabilities	Québec would not share in Bank of Canada profits and would thus not have to assume monetary liabilities	Liability division criterion	Québec would not have to assume monetary liabilities provided it did not share in Bank of Canada profits	Division criterion	Division criterion
Financial liabilities	According to the proportion of assets Québec receives, 18.5 percent	Liability division criterion, less adjustment for assets apportionment	Division criterion, less adjustment for assets apportionment	Division criterion and negotiations	Division criterion and negotiations
EMPLOYEE RETIREMENT PLANS ACCOUNT	Plan participants residing in Québec, 13.3 percent	Plan participants residing in Québec, 13.3 percent	Division criterion	Division criterion	Division criterion
QUÉBEC'S SHARE OF THE DEBT (1990)	**$66 billion**	**$52 billion**	**$73 billion after adjustment**	**$90 billion before adjustment**	**$102 billion before adjustment**

5.4.3 The budget

A number of the many experts who prepared studies or testified before the Committee to Examine Matters Relating to the Accession of Québec to Sovereignty broached the question of Québec's public finances. In particular, mention should be made of Professors John McCallum, Pierre Fortin and Rodrigue Tremblay, and economist Patrick Grady.

According to these specialists, Québec's public finances would be affected in three ways by the accession to sovereignty. First, the repatriation of taxes paid to the federal government and taking charge of federal services would significantly increase the Gouvernement du Québec's revenues and expenditures, which in turn would clearly affect the annual balance of budgetary transactions. Second, the balance would also be affected by service on the federal debt transferred to Québec. Third, sovereignty's effects on economic conditions could alter Gouvernement du Québec revenues and expenditures.

The experts who analysed the impact of Québec's accession to sovereignty on the budget used as their point of departure the study prepared by the Secretariat of the Bélanger-Campeau Commission.[120] The 1990-1991 fiscal year was used as a reference; Québec initially anticipated a deficit of $2 billion at that time.

In this section, following the example of the experts who examined this question, the financial ratios of a sovereign Québec used take into account Québec GDP for 1990, although GDP could be different after sovereignty. Such an approach makes it possible to engage in comparisons with other *pro forma* studies dealing with the question.

A) Conclusions of the Report of the Commission on the Political and Constitutional Future of Québec (Bélanger-Campeau Commission)

Were it to accede to sovereignty, Québec would have to ensure those services that are now offered by the federal government and recover the taxes that the latter levies in Québec. Based on a detailed study, the Secretariat of the Bélanger-Campeau Commission claimed that the government of a sovereign Québec would have recovered $24.5 billion in

---

120. COMMISSION ON THE POLITICAL AND CONSTITUTIONAL FUTURE OF QUÉBEC, *op. cit.*, pp. 393-511.

taxes in 1990-1991. Moreover, it would have cost Québec an additional $18.2 billion to provide the services previously offered by Ottawa. A sovereign Québec would have relinquished $6.8 billion in federal transfer payments. In the reference year, 1990-1991, a $0.5 billion operating deficit would have resulted, without taking into consideration the effects of dividing the debt and the possibility of streamlining the budget. The Secretariat also surmised that a sovereign Québec would inherit $66.1 billion of debt,[121] which would entail $7.1 billion in interest payments the first year.

While its intention was not to draw up a list of all possible savings, the Secretariat of the Bélanger-Campeau Commission estimated that $522 million could be saved with respect to the travel expenses of public servants and the overlapping of jobs in the federal and Québec revenue departments. The figure put forward in the mid-range scenario was $261 million.

B) Other evaluations

The Secretariat of the Bélanger-Campeau Commission confined itself to examining the impact on the budget of the repatriation of programs, federal revenues and the dividing of the federal debt. For this reason, it did not take into account the short-term economic effect of Québec's accession to sovereignty nor its impact on the Québec budget. The experts who subsequently examined the question of public finances did focus on this impact.

a) Repatriation of federal government revenues and expenditures

A number of experts used the evaluations in the foregoing study as a reference point to examine the net cost of repatriating federal government services and revenues. Rodrigue Tremblay et Pierre Fortin used the study's findings as a point of departure. The latter subsequently added the start-up costs inherent in the restructuring of government organizations. In particular, these costs would reflect the expense of transferring a portion of the federal public service to the provincial public service, purchases of new equipment, finding new suppliers and the adaptation of regulations to the new political environment, at a cost of $300 million a

---

121. See section 5.4.2, "*Dividing the federal government's assets and debt*".

year for two years. John McCallum also used the evaluation prepared by the Secretariat of the Bélanger-Campeau Commission with regard to the transfer of federal government services and taxes, although he surmised that military spending would require an additional $1.2-billion outlay.

b) Dividing the debt

Québec's share of the final debt after the federal government debt and assets prior to sovereignty were divided would significantly affect the budget of a sovereign Québec. While the experts use the same figures at the outset with regard to monetary liabilities, liabilities pertaining to bonds, federal employee retirement plan accounts, and financial and non-financial assets, the array of methods for effecting the division that they used produce markedly different results.[122]

Based solely on the studies in which federal government assets and liabilities were divided according to the ability to pay, it can be concluded that the estimate of Québec's share of the federal debt ranges from $66 billion to $90 billion. Consequently, the interest that the additional debt would engender and which would be added to budgetary expenditure during the first year of sovereignty would range from $7.1 billion to $8.6 billion.[123]

---

122. See section 5.4.2, "*Dividing the federal government's assets and debt*".

123. Debt service results from the application to the debt of an average interest rate of 10.7 percent, before the imposition of a risk premium. This was the average interest rate borne by federal bond debt in 1990-1991. It should be noted that John McCallum estimated at $90 billion Québec's share of the federal debt, which would add $9.6 billion to the debt service the first year. The division method that he used does not grant an adjustment for assets apportionment, but does advocate that Québec be entitled to a fair share of revenues from federal government assets, worth roughly $1 billion a year, thereby reducing the debt service.

Table 5.7

Division of the federal debt
Comparison of the calculations of different experts
(Reference year: 1990-1991—in billions of dollars)

	Bélanger-Campeau Secretariat	Tremblay	Fortin	McCallum
Québec's share of federal debt	66.1	66.1	73.4	89.6
Attendant debt service	7.1	7.1	7.9	8.6

c) Credit rating and debt financing

The uncertainty surrounding the constitutional debate and the transitional period could lead to the imposition of a risk premium on interest rates. International rating agencies periodically update their assessments of countries and provinces in order to ascertain the level of risk inherent in their borrowings on international markets. The rating is used in particular as a reference when the interest rates applicable to government and government corporation borrowings are established. The agencies examine various factors to determine the State's rating, notably its indebtedness in relation to its ability to pay, the balance of payments, the structure of its economy, the government's ability to influence the balance of trade, and economic growth prospects.

In the event that a sovereign Québec faced budgetary constraint and prospects for economic growth were less robust, the agencies could well lower Québec's credit rating on the financial markets, even though the economic union with Canada were maintained. As a result, it would be much costlier and possibly harder for the Gouvernement du Québec and government corporations to obtain external financing.

However, if there was a subsequent upturn in the economic situation and the budget picture, it would obviously lead sooner or later to the reestablishment of Québec's rating, perhaps at an even higher level. Indeed, if Québec's current rating is compared to that of sovereign nations with similar economies and levels of debt, it will be noted that the latter nations' credit ratings are usually higher than Québec's.

The experts agree that, in the short term, the interest premium could hover between 0.6 and 1.6 percentage points. The premium would cover the existing spread between the interest rates paid by the Québec and Canadian governments, and a risk premium tied to uncertainty. Most of the experts applied premiums to the interest rates on the portion of the debt that would be renegotiated every year. Economists Pierre Fortin and Rodrigue Tremblay surmise that the premiums would increase government spending by between $200 million and $400 million. John McCallum appplied a premium of the same order of magnitude but on a larger portion of the federal debt. He concluded that Québec would have to spend an additional $700 million.

d) Other stemming from the economic context

Several experts wondered about the overall impact of sovereignty on Québec's public finances. For purposes of analysis, they had to formulate hypotheses concerning the economic repercussions of a change in Québec's political status in order to ascertain its impact on government revenues and expenditures.

As was noted earlier,[124] the experts who scrutinized the economic fallout from Québec sovereignty fell into two groups. The first group predicated its assumptions on the maintenance of existing trade relations with Canada; the second hypothesized that Québec sovereignty would lead to a series of economic reprisals and the establishment of trade barriers.

Among the experts who based their thinking on the maintenance of an economic union, Rodrigue Tremblay believes that sovereignty would have a positive effect on the Québec budget. In his opinion, the repatriation of federal spending programs would enable the Gouvernement du Québec to engage in more extensive spending that creates jobs, notably through the construction of additional infrastructures. Other experts such as Pierre Fortin and John McCallum feel that, overall, Québec sovereignty would be accompanied in the short run by an economic slowdown that would nudge up the unemployment rate. Pierre Fortin predicts a one percentage point increase, and John McCallum, one percentage point the first year and an additional point the second and third years.

Rodrigue Tremblay opined that the economic induced effects from sovereignty would reduce the deficit by $100 million. Pierre Fortin

---

124. See section 5.3.6, "*Economic implications*".

surmised that the economic situation would increase it by $1.3 billion, while John McCallum set this increase at $1.6 billion for the first year.

Table 5.8

Impact of the economic situation on the balance of budgetary transactions
Comparison of the calculations of different experts
(Reference year: 1990-1991—in billions of dollars)

	Study		
	Tremblay	**Fortin**	**McCallum**
Interest premium	- 0.2	- 0.4	- 0.7
Economic induced effects	0.1	- 1.3	- 1.6
TOTAL	- 0.1	- 1.7	- 2.3

N.B. : A negative figure indicates an increase in the budgetary deficit.

e) Overall effect on the budget balance

The final results for the Gouvernement du Québec's 1990-1991 fiscal year reveal a deficit of $2.8 billion. According to the different evaluations based on an economic association with Canada, the budgetary deficit of a sovereign Québec would range from $10.4 billion to $15.4 billion, equivalent to between 6.8 percent and 10.0 percent of GDP, before measures to streamline spending were adopted.

Given that expenditures related to government employee retirement fund accounts are included in expenditures but do not require immediate disbursements, the government's net financial requirements would not be as high as suggested by the budgetary deficit figure put forward. Without streamlining, net financial requirements would total from $8.5 billion to $13.5 billion, equivalent to between 5.5 percent and 8.8 percent of Québec GDP.

Among the experts heard by the Committee, only John McCallum looked closely at the public finances of a sovereign Québec during the first five years following its accession to sovereignty. According to the hypotheses he adopted, the Québec deficit, which he estimated at $15.4 billion the

first year, would increase by $2.6 billion the second year and $200 million the third year, then fall in the subsequent years. During the first two years, short-term economic shocks and interest rate premiums would be the main causes of dislocations in public finances.

As for the analysis submitted by Patrick Grady, who foresees a disruption of the Canadian economic space, it can be deduced that Québec's budgetary deficit would reach $21.7 billion or 14.1 percent of GDP[125] under this scenario. The high level is attributable by and large to the hypotheses used by the analyst concerning the division of the debt ($102 billion) and the economic situation (10-percent short-term drop in GDP).

f) Opportunities to streamline public expenditure and tax revenue

Some experts noted that the repatriation of federal expenditures and revenues would allow a sovereign Québec to streamline its spending. According to Rodrigue Tremblay, the elimination of duplications between Québec and Canadian government departments and better coordination of government programs could result in up to $2.7 billion in savings. Pierre Fortin is of the opinion that the elimination of the duplication and overlapping of programs could easily lead to $1 billion in savings. However, he suggested that, in addition to such savings, the government should adopt a vigorous $3-billion cost-cutting program in order to restore the deficit/GDP ratio to its pre-sovereignty level.

125. Pierre FORTIN, 1992, *op. cit.*, p. 28.

Table 5.9

Budget balance of a sovereign Québec
Estimates of various experts
(Reference year: 1990-1991—in billions of dollars)

	Study			
	Bélanger-Campeau Secretariat	Tremblay	Fortin	McCallum
Real Gouvernement du Québec budget balance (prior to sovereignty)	- 2.8	- 2.8	- 2.8	- 2.8
Net effect of repatriating federal expenditures and taxes	- 0.5	- 0.5	- 0.8	- 1.7
Debt service attributable to repatriation of a portion of the federal debt	- 7.1	- 7.1	- 7.9	- 8.6
Effect of economic situation	—	- 0.1	- 1.7	- 2.3
Estimated budget balance without streamlining	- 10.4	- 10.5	- 13.2	- 15.4
As a percentage of GDP	6.8%	6.8%	8.6%	10.0%
Streamlining of or reduction of spending	0.3	2.7	3.0	3.8
Estimated budget balance after streamlining	- 10.1	- 7.8	- 10.2	- 11.6
As a percentage of GDP	6.6%	5.1%	6.6%	7.5%

Source : COMMITTEE SECRETARIAT

According to John McCallum, a sovereign Québec could not depend on achieving significant savings by repatriating federal government services and revenues. He maintains that the government should adopt a drastic cost-cutting program aimed at reducing the deficit by $3.8 billion, to bring the deficit/GDP ratio down to an acceptable level. The deficit reduction would not be achieved primarily through streamlining, but by curtailing services or trimming the cost of producing such services. If Québec is to achieve the desired result, John McCallum calculated that the government

would have to reduce spending by $6.7 billion[126], in order to reduce the deficit by $3.8 billion, because of the induced effect of such cutbacks on the government's own revenue.

In the opinion of the experts, bearing in mind various means of pruning government spending in a sovereign Québec, the budgetary deficit would range from $7.8 billion to $11.6 billion, equivalent to between 5.1 percent and 7.5 percent of Québec GDP. Under the circumstances, the government's net financial requirements would total from $5.9 billion to $9.7 billion, equivalent to between 3.8 percent and 6.3 percent of GDP.

C) Management of the public finances of a sovereign Québec

In order to properly ascertain the Gouvernement du Québec's financial position following the accession to sovereignty, it is necessary to estimate Québec's budgetary deficit and debt ratios and compare them with those that obtain in Canada and elsewhere.

To properly interpret data on the budget deficit of a sovereign Québec, it must be remembered that, at present, Québec taxpayers bear two government deficits through their taxes, i.e. that of Québec and a portion of the federal deficit. Bearing in mind that 22.8 percent of federal taxes have been levied in Québec over the past 20 years, it is reasonable to conclude that Quebecers assumed, in 1990-1991, roughly $7.0 billion of Ottawa's $30.6 billion deficit.[127] When the Gouvernement du Québec's $2.8 billion deficit is factored in, Quebec taxpayers bore a total deficit of $9.8 billion, or 6.4 percent of GDP, in 1990-1991. Should the tax burden remain unchanged, a sovereign Québec could bear a budget deficit of the same magnitude without its relative position or, consequently, its financial ratios, being altered.

According to the approach used by the Secretariat of the Bélanger-Campeau Commission, in 1990-1991 the budget deficit of a sovereign Québec would have totalled $10.4 billion or 6.8 percent of GDP. The debt figure assumes that the tax burden remains constant and that spending is not streamlined in any way. As Table 5.10 shows, the Canadian budget deficit is equivalent to 6.0 percent of Canadian GDP. According to these data, following sovereignty, the budget deficit of Canada and the nine provinces would be equivalent to 5.8 percent of GDP.

---

126. John McCALLUM and Chris GREEN, *op. cit.*, p. 47.

127. Pierre Fortin, 1992, *op. cit.*, p. 2.

Table 5.10

Budgetary deficit of Québec and Canada, 1990-1991

	In billions of dollars	As a percentage of GDP
Current situation		
Québec**	9.8	6.4
Canada : federal government and ten provinces	40.2	6.0
Situation after sovereignty according to the Bélanger-Campeau approach		
Québec	10.4	6.8
Canada : federal government and nine provinces	29.8	5.8

** Québec's share of the budget deficit under the federal regime.

Source : COMMITTEE SECRETARIAT.

It is obviously impossible to accurately predict the impact of sovereignty on public finances, especially on the budget deficit, given the widespread uncertainty surrounding the outcome of negotiations on the division of the debt, the effect of Québec's taking charge of federal services, and the impact of the economic situation following Québec's accession to sovereignty. Table 5.11 provides the estimates of the experts who examined this question under the assumption that the Canadian common market would be maintained. The impact could obviously be more significant if the essential traits of the current common market could not be maintained. In this perspective, Patrick Grady's analysis offers a worthwhile basis for comparison.

Table 5.11

Budget balance in the first year of Québec sovereignty*
Comparison with the current situation
(Reference year: 1990-1991—in billions of dollars)

	Study			
	Bélanger-Campeau Secretariat	**Tremblay**	**Fortin**	**McCallum** **
Estimated budget balance without streamlining	**-10.4**	**-10.5**	**-13.2**	**-15.4**
Budget balance under the federal regime	-9.8	-9.8	-9.8	-9.8
Impact of sovereignty before streamlining	**-0.6**	**-0.7**	**-3.4**	**-5.6**
Streamlining or reduction of services***	0.3	2.7	3.0	3.8
Impact of sovereignty after streamlining	**-0.3**	**2.0**	**-0.4**	**-1.8**

* A negative sign indicates a budget deficit or an increase in the deficit.

** Effects of the first year only; additional impact on the order of $2.6 billion would be added during the second year.

*** According to John McCallum, savings would result primarily from reductions in services or lower public sector wages.

Regardless of the scenario, the government of a sovereign Québec would have to adopt the necessary measures to maintain public finances within reasonable financial ratios that were acceptable to lenders.

The first means at its disposal would be to streamline government spending overall in the wake of the repatriation of federal services and revenues. In the opinion of the experts, this approach could lead to gross savings of between $2 billion and $3 billion.

The second solution would be to raise personal and corporate taxes. It should be noted that a 5-percent increase in the overall tax burden could generate additional gross revenues of roughly $2.5 billion.

Higher taxes or lower spending could curtail economic activity and, consequently, curb government revenues. If need be, the foregoing impact should be taken into account to gauge the overall effect of Québec's accession to sovereignty.

The Gouvernement du Québec could also resort to its borrowing power. However, in the event that it had to cope with difficult budgetary restraint, the government could be forced to pay higher premiums on its borrowings.

Another relevant consideration that bears mentioning is that the analysis of a sovereign Québec's public finances should also take into consideration changes in the budget since 1990-1991 and future prospects as established by the governments concerned. If the Gouvernement du Québec deficit has increased since the 1990-1991 fiscal year, the likely reduction in the federal deficit would work in the opposite way.

Table 5.12 analyses the sensitivity of the budget deficit of a sovereign Québec to fluctuations in a number of decisive factors.

Table 5.12

Sensitivity analysis of the budgetary deficit in a sovereign Québec Reference year: 1990-1991

Sensitivity factors	Impact on the deficit*	
	In billions of dollars	As a % of GDP
1 % change in economic activity	-0.8	-0.5
$10 billion change in Québec's share of the federal debt	1.1	0.7
1% change in spending	0.6	0.4
1% change in tax burden	-0.5	-0.3

* A negative sign indicates impact contrary to the change in sensitivity factors.

Source: COMMITTEE SECRETARIAT.

D) The indebtedness of a sovereign Quebec

The indebtedness of a sovereign Québec is a criterion on which the financial markets would focus. For this reason, Québec's position in relation to other industrialized nations is important.

If the method of dividing the federal government's debt and assets proposed by the Secretariat of the Bélanger-Campeau Commission is applied to data from the national accounts, the gross public debt of all governments in a sovereign Québec would have been equivalent to 71.3 percent of GDP in 1990.[128] For purposes of comparison, Canada's gross public debt totalled 70.6 percent of GDP the same year. Were Québec to attain sovereignty, Canada's gross public debt without Québec would have been equivalent to 70.4 percent of GDP. These findings reflect, in particular, the fact that the Gouvernement du Québec and Québec municipal governments are, on average, more heavily indebted than the governments and municipalities of the other provinces. Net indebtedness, i.e. gross indebtedness less the financial assets of the foregoing governments, would have been 45.9 percent in a sovereign Québec in 1990, compared with 43.4 percent for Canada, and 42.6 percent for Canada without Québec.

With a gross indebtedness rate of this magnitude, Québec would be less indebted than Belgium (130.2 percent), Ireland (115.2 percent) or Italy (101.1 percent), and would compare favourably with the Netherlands (79.3 percent) and Japan (66.4 percent). On average, the OECD countries carry gross debt equivalent to 58.5 percent of GDP. As for net debt, the average rate for OECD countries overall was 32.2 percent of GDP in 1990.[129]

An alternative scenario can be used to assess the sensitivity of these findings, one in which Québec would assume $90 billion of federal debt, i.e. where GDP is used as a division criterion. If such were the case, Québec's rate of gross indebtedness would be 81.4 percent. Its net rate of indebtedness would be 48.9 percent, bearing in mind that, under this scenario, Québec would perforce be entitled to 23.4 percent of federal government financial assets.

---

128. These estimates have been made using data from the national accounts and the method employed by the OECD to establish international comparisons. The latter method does not take into account the portion of debt attributable to retirement plans and non-financial assets.

129. OECD, *Perspectives économiques*, Paris, December 1991, p. 141.

Provided that federal government debt is shared according to the ability to pay, based on the adjustment for assets apportionment, Québec's gross rate of indebtedness would range from 71.3 percent to 81.4 percent and its net rate of indebtedness would range from 45.0 percent to 48.9 percent.

Table 5.13

Comparison of public-sector debt ratios, 1990

	Gross debt*/GDP (%)	Net debt**/GDP (%)
Average in OECD countries	58.5	32.2
Average in European countries	56.7	42.1
Canada as is	70.6	43.4
Scenario A		
Québec	71.3	45.9
Canada excluding Québec	70.4	42.6
Scenario B		
Québec	81.4	48.9
Canada excluding Québec	67.4	41.7

Scenario A : Bélanger-Campeau approach

Scenario B : Québec would assume 23.4 percent of federal debt and financial assets, while non-financial assets are pegged at $1.

* Estimates made by the Secretariat based on data pertaining to the National Balance Sheet Accounts and the OECD method, which does not take into account the debt of retirement plans.

** Gross financial liabilities less financial assets.

Source : OECD, *Perspectives économiques*, December 1991, p. 141; and COMMITTEE SECRETARIAT.

Table 5.14

International comparison of public indebtedness, 1990

	Credit rating	Gross public debt as % of GDP	Net public debt (as a percentage of GDP	
Belgium	AA+**	130.2	Belgium	120.0
Ireland	AA-	115.2	Italy	98.2
Italy	AA+	101.1	Netherlands	58.8
Greece	BBB	81.6	**Québec (S*)**	**45.9**
Netherlands	AAA	79.3	**Canada as is**	**43.4**
Québec (S*)		**71.3**	**Canada (S*)**	**42.6**
Canada as is	**AAA**	**70.6**	United States	34.5
Canada (S*)		**70.4**	Spain	31.4
Japan	AAA	66.4	United Kingdom	29.0
Denmark	AA+	58.9	Denmark	26.6
United States	AAA	56.9	France	24.8
Austria	AAA	55.3	Germany	21.7
France	AAA	46.5	Japan	10.9
Sweden	AAA	44.6	Finland	- 3.0
Spain	AA	44.1	Sweden	- 7.0
Norway	AAA	41.6	Norway	-22.1
Germany	AAA	41.2		
United Kingdom	AAA	35.8		
Finland	AAA	15.0		
Australia	AA	13.5		

S* : Bélanger-Campeau scenario: Québec would assume 18.5 percent of federal government financial liabilities and 3.8 percent of financial assets.

** : Credit rating in December 1991. Québec's credit rating was AA-.

Source : STANDARD & POOR'S CREDITWEEK INTERNATIONAL, December 2, 1991, p. 20 and OECD, *Perspectives économiques de l'OECD*, No. 50, Paris, December 1991; and COMMITTEE SECRETARIAT.

3. The order of reference of the committee is to examine and analyse matters relating to the accession of Québec to full sovereignty, that is, to a position of exclusive jurisdiction, through its democratic institutions, to make laws and levy taxes in its territory and to act on the international scene for the making of agreements and treaties of any kind with other independent States and participating in various international organizations, and to make recommendations to the National Assembly in that regard.

A further order of reference of the committee is to examine and analyse any formal offer of economic partnership that may be made by the Government of Canada, and to make recommendations to the National Assembly with regard to the offer.

An Act respecting the process for determining the political and constitutional future of Québec, adopted by the National Assembly on June 20, 1991